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## LEGACIES FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

Gifts by legacy or otherwise will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions:—

1. Training of future Church Army Officers and Sisters.
2. Support of Church Army Officers and Sisters in poorest parishes.
3. Distressed Gentlemen's Work.
4. Clergy Rest Homes.

Preliminary enquiries will be gladly answered by the

Financial Organising Secretary

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## A Recommendation to Mercy

In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

REMEMBER THE  
**RSPCA**

## MISS AGNES WESTON'S ROYAL SAILORS RESTS

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Mrs. Bernard Currey

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £50,000 have just been taken up, whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

£unds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop Miss Weston's work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructive purposes.

Legacies are a most welcome help

Not subject to Nationalisation.

Contributions will be gratefully acknowledged. They should be sent to the Treasurer, Royal Sailors Rests, Buckingham Street, Portsmouth. Cheques, etc., should be crossed National Provincial Bank Ltd., Portsmouth.

## Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. Latest time for receipt—9 a.m. Wednesday.

*None of the notices in these columns relates to men and women coming within the provisions of the Control of Employment Order, 1945, S.B. & T. No. 2021, or the vacancy is for employment exempted from the provisions of the Order.*

### COUNTY BOROUGH OF BIRKENHEAD

#### Appointment of Chief Assistant Solicitor

APPLICATIONS are invited from Solicitors with considerable experience of Local Government Law and administration for the appointment of Chief Assistant Solicitor at a commencing salary within Grade A.P.T. 2 (£850—£1,000) according to qualifications and experience.

Candidates must be capable and experienced advocates and able to conduct proceedings in Magistrates' and County Courts without supervision and must be prepared also to assist in the general legal and administrative work of the office.

Full particulars of the appointment and forms of application may be obtained from the undersigned by whom applications must be received not later than February 13, 1950.

DONALD P. HEATH,

Town Clerk.

Town Hall,  
Birkenhead.  
January 21, 1950.

### BOROUGH OF REDDINGTON AND WALLINGTON

#### Deputy Town Clerk

APPLICATIONS for this appointment (to become vacant by promotion early in March) invited from Solicitors with adequate local government experience.

Salary £715.£50.£915 (consolidated). The Council may agree commencing point above the minimum in an appropriate case.

Form and further particulars sent on request. Closing date Tuesday, February 14, 1950. Canvassing disqualifies.

C. PETER CLARKE,

Town Clerk.

Town Hall,  
Wallington,  
Surrey.  
January 24, 1950.

### COUNTY OF BUCKINGHAM

#### Appointment of Full-Time Male Probation Officer

APPLICATIONS are invited for appointment as full-time probation officer in mid-Bucks, with office in Aylesbury, subject to the Probation Rules, 1949, and the Probation Officers (Superannuation) Order, 1948, at a salary in accordance with the prescribed scale. Possession of a motor-car is desirable and mileage allowance on the County scale will be paid.

Applications, stating age, qualifications, experience, etc., together with the names of two referees, should reach the undersigned not later than February 24, 1950.

C. R. CROUCH,  
Clerk of the Peace for Bucks.

County Hall,  
Aylesbury.  
23.1.50.

### COUNTY BOROUGH OF WEST HAM

#### Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving full-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials must reach me not later than the first post on February 17, 1950.

G. V. ADAMS,

Clerk to the Justices and Secretary of the Probation Committee.

Magistrates' Court,  
West Ham Lane,  
Stratford, E.15.

### BIRMINGHAM REGIONAL HOSPITAL BOARD

#### Appointment of Unadmitted Legal Assistant

APPLICATIONS are invited by the Board for the appointment of an unadmitted legal assistant on the scale £520 to £570 per annum. Applicants must have had experience in the general work of a law office including County Court and High Court (District Registry) practice and conveyancing. The appointment is subject to the National Health Service (Superannuation) Regulations, 1947 to 1949, and to the passing of a medical examination and will be terminable by one month's notice on either side. Applications stating age and details of experience and qualifications, with the names of two referees, must be received by the Secretary, Birmingham Regional Hospital Board, 10, Augustus Road, Birmingham, 15, not later than February 13, 1950. Canvassing will disqualify.

### BOROUGH OF TORQUAY

#### Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with municipal experience for the above appointment at a salary in accordance with Grade X (£850 to £1,000) in the A.P. & T. Division of the National Joint Council's Scheme.

The appointment will be subject to:—

(a) One calendar month's notice on either side.

(b) The provisions of the Local Government Superannuation Act, 1937.

(c) The passing of a medical examination, and

(d) The National Joint Council's Conditions of Service.

Applications, stating age, qualifications, experience, etc., together with copies of three recent testimonials should be sent to the undersigned not later than Monday, February 13 next.

T. ELVED WILLIAMS,

Town Clerk.

Town Hall,  
Torquay.  
January, 1950.

#### WANTED

TOWN Clerk of small borough wishes to purchase wig and gown. Offers to Box A9, Office of this paper.

## CALENDAR

By R. N. HUTCHINS, LL.B.

### FOR THE GENERAL ELECTION

#### IS IMMEDIATELY AVAILABLE IN CONVENIENT FORM

The Calendar is reproduced at p. 31 *ante*. Additional copies, suitable for ready reference, have been reprinted on stiff white card, which are obtainable from the Publishers:

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## NOTES of the WEEK

### "A Foolish Adventure"

Many young offenders, and some older ones, show a complete failure to realize that they have committed a crime. Often they refer to it as if it were some accident or misfortune that had overtaken them, or treat it as an escapade or piece of harmless fun, quite regardless of its effect upon other and more innocent people. One of the jobs for the court in such cases is to bring home to the offender the true nature of what he has done and to mark the disapproval of ordinary right-minded people.

Recently a young man who, it was alleged, had broken into a garage and stolen property, and had badly assaulted a plucky policewoman who had interfered, described his actions as a foolish adventure, the learned deputy recorder soon corrected this. He said it had developed into a downright cowardly assault, and he sentenced the young man to borstal training, under which it is to be hoped he will learn that crimes of dishonesty and violence, even if they are foolish, are also grave offences against the law, and can be punished with severity.

So far as the woman constable was concerned, we note that she received a well-merited commendation from the court. Women police have, in barely thirty years, established a tradition of devotion, courage and efficiency, which makes them fit comrades for the men with whom they serve.

### Evidence of Non-access

Most of the provisions of the Law Reform (Miscellaneous Provisions) Act, 1949, have little or no bearing on the work of the magistrates' courts, but s. 7 is of the greatest importance to them, no less than to the superior courts.

This section permits husband or wife to give evidence, in any proceedings, that marital relations took place or did not take place, during any period, and thus gets rid of the prohibition against evidence by spouses on the issue of access or non-access given with a view of establishing the illegitimacy of a child born to the wife during the marriage. The leading case was, of course, *Russell v. Russell*.

There are a certain number of people who feel that the rule was salutary, and that the parties to a marriage ought not to be allowed to testify on the most intimate relations between them, for the purpose of deciding the status of a child presumed by law to be legitimate. We think the number of such people is diminishing, and that the majority view is that the abolition of the prohibition is in conformity with present-day opinion.

In matrimonial, adoption or affiliation cases, magistrates have often felt hampered by being unable to hear the parties who knew the facts as nobody else could, and occasionally the doing of justice may have been completely frustrated. The

court wants to get at the truth, and with that end in view, to hear all who can testify to the facts. The likelihood that the spouses would concoct evidence on this issue, either in concert or singly, seems remote, and naturally the court will be on the watch if there is any cause for suspicion. Magistrates often have to make allowance, when weighing evidence, for the self-interest of a party, but that does not make the evidence valueless. We believe the alteration in the law will make for the better administration of justice.

It is to be noted that the husband and wife are made competent, but not compellable witnesses as to access or non-access.

### N.S.P.C.C.

These initials, so well known to those who work in the magistrates' courts, and also to a fair number of the general public, stand for a society which has been doing great work for children over a long period, and for this reason many people would not like to see them changed.

However, Mr. Geoffrey Raphael, one of the metropolitan stipendiary magistrates, has suggested that some change in the name of the society should be considered. He rightly points out that the fact of the society's inspectors being known as "the cruelty man" may tend to obscure the fact that a principal part of their work consists of giving advice and help in cases where ignorance is the real cause of neglect and suffering. All who have been accustomed to listen to the evidence in cases where parents have been prosecuted in this type of case realize that prosecution is the last resort, and that the society tries patiently and persistently to avoid it.

Perhaps a change of name might be of advantage. We can most of us think of societies or institutions which have changed their names, possibly because the character of their work and methods has altered, possibly because words have acquired a new meaning in the minds of the public. The matter is at all events worth consideration. Maybe the familiar initials could remain, as for example, by substituting "care of" for "cruelty to" and "promotion" for "prevention."

### Rates Due from a Bankrupt

The decision of the Divisional Court in a case included in *The Times* on December 5, under the unhandy title *In Re a Debtor*, and in our Weekly Notes of Cases at 113 J.P.N. 776 under the title of *Re McGreavy, ex parte McGreavy and the Benfleet U.D.C.*, is of much academic interest and some practical interest. We make this distinction, because we do not think it will often happen that a rating authority will have occasion to launch a petition under s. 4 of the Bankruptcy Act, 1914. The greater

number of rate defaulters are persons of small means, and the amounts are small. Where a substantial ratepayer is heavily in arrear, it is very generally found that such a ratepayer is a company, and the decision in *Re North Bucks Furniture Depositories* [1939] 2 All E.R. 549; 103 J.P. 207, had shown already that a winding-up petition could be launched by a rating authority. Where a private person is in default upon his rates, for an amount which makes it worth while to consider bankruptcy proceedings, it is more likely than not that he owes other debts, and the local authority will usually find it better business to let an ordinary creditor move first, and "stand the racket" of petitioning, when they will come in as preferential creditors for the outstanding rates. In the case we are now noticing, the rates were due in respect of a sports ground, and amounted to more than £4,000, so that the case was exceptional, and the local authority thus found it worth while to petition in bankruptcy, and have performed a service to rating authorities at large by establishing their right to do so. The contrary proposition was far from unarguable. It has been settled for centuries that the exclusive method of recovering rates was by distress, and this was re-confirmed comparatively recently in *Liverpool Corporation v. Hope* [1938] 1 All E.R. 492; 102 J.P. 205. There was authority in *Re Muirhead* (1876) 34 L.T. 303, for believing that in bankruptcy law a petition could not be founded except upon an actionable debt, and thus that the word "debt" in s. 4 (the section authorizing petitions) meant something different from what it meant in s. 33 of the Act of 1914, which says what debts are provable. The Divisional Court brushed this argument aside, on the ground that the remarks of Cockburn, C.J., in *Re Muirhead* were obiter; that the distinction was unsound in principle; and that there was an analogy between a petition in bankruptcy and a winding-up petition, where the local authority's right had already been established in *Re North Bucks Depositories*, *supra*. The result may be summed up as being that, so long as the ratepayer is a private person and not upon the verge of bankruptcy, the local authority are thrown back upon distress, and the ratepayer enjoys the benefit of the Money Payments (Justices Procedure) Act, 1935. Where the ratepayer is a company, the rating authority can petition for the company to be wound up, and where the ratepayer is an individual the rating authority can launch a bankruptcy petition if it thinks it worth while, thus incidentally, as was pointed out by counsel for the bankrupt in the present case, avoiding the effect of the Money Payments (Justices Procedure) Act, 1935.

#### Aladdin's Cave

Recently New Scotland Yard contained such a collection of valuables as to resemble a modern Aladdin's cave. Forty thousand pounds worth of jewellery met the gaze of anxious insurance assessors, who visited the Yard to discover if the property of clients, stolen over the past four years or so, might be there.

A man shot himself in a Surrey hotel, and in his home on a Thames island was found the jewellery, valued at £200,000 in question. Some articles have been identified and are believed to be part of the proceeds of crimes, which have been the subject of police investigations since the war.

Identification of rare and expensive items of jewellery is often possible not because of crests, arms, or markings, but by the very nature of their variety. On the other hand, bracelets, necklaces and rings of considerable worth can readily be broken up, the metal melted down and the stones disposed of broadcast.

The owner of the island home in which the jewellery was found shot himself with a walking stick shotgun. His visiting cards described him as a "dealer in precious stones."

#### Betting and Gaming Laws

The case of *Coughtrey v. Porter*, briefly reported at p. 65 *post*, is noteworthy, apart from the legal question involved, by reason of observations of the Lord Chief Justice on the state of the law as to betting and gaming and a difficulty of interpreting it.

Lord Goddard said the case was a striking instance of the confusion into which statutes had got in these gaming matters. He hoped it would come to the attention of the Royal Commission on Betting, Lotteries and Gaming. Further, in delivering the judgment of the court allowing the appeal, he added that the court could well sympathize with the justices who had had to construe a maze of statutory provisions not easy to fit in one with the other.

The appeal was against an order of justices for the destruction of certain machines which had been seized in purported pursuance of a warrant under the Gaming Act, 1845. An information had been laid under the Betting Act, 1853, and it was upon this that the appellant was convicted and fined. He contended that in these circumstances there was no power to order destruction of the machines.

The Lord Chief Justice said the police officers had not found Mr. Coughtrey on the premises when they executed the warrant. Having arrested him afterwards, they did not take him at once before the justices, but a police officer had granted him bail.

It had been argued, rightly, for Mr. Coughtrey, that he was not before the justices by virtue of the warrant issued under the Act of 1845. That Act, and not the Betting Act, 1853, provided for the destruction of machines. It followed that the order for the destruction of the machines was invalid, and the appeal would be allowed.

#### Electricity Reports

Reasons for anticipating satisfactory first reports from the British Electricity Authority and the area boards constituted under the Electricity Act, 1947, easily outweighed any of a negative character. The industry had flourished for many years before the war, partly because the commodity was useful and desirable in itself, its manufacture and supply were, speaking generally, conducted efficiently, and sales were promoted by assiduous propaganda. Those favourable pre-war factors have been enhanced in the post-war period by the fortuitous circumstance that incomes of many consumers, commercial and private, have been substantially expanded in excess of operating costs derived, to some extent, from assets installed at pre-war rates of capital outlay. Generation by the Central Authority in its first year of nearly double the 1938-39 quantity reflects remarkable achievements by the industry.

Higher consumption by domestic consumers was probably responsible for lowering the average revenue per unit for lighting, heating and cooking in 1948-49 by nine per cent. below the 1938-39 average. This apparently contradictory decrease would naturally occur for various reasons apart from lower prices, or even in the face of prices in some degree higher. The main reason in the present case was higher consumption, accompanied by larger spending, by consumers on two-part tariffs, consisting of a standing charge based on number of points, rooms, floor area, rateable value, or what you will, and a running charge often below one penny per unit. Until the quantity of consumption is sufficient to bring average revenue per unit from the standing charge down to the running charge increased domestic consumption subject to two-part tariffs, which are substantially the vogue, will always result in a lower average price per unit.

Presumably, consumers were satisfied, if not entirely content, to incur heavier aggregate charges from higher incomes for more electricity, and the industry was able, and pleased, to reap benefit from the product of the law of increasing return, so people at both ends of supply lines were happy at the expansion of a public service.

Two deficits among the fourteen area boards' net revenue accounts are hardly surprising at this early stage of the new administrative structure, and may be merely a transitional feature which will disappear without further upward adjustment of prices in any parts of the two areas concerned, *viz.*, south-western and eastern. In both cases, the deficit bore a comparatively small ratio of between one and two *per cent.* of total

revenue, and should, therefore, be susceptible to elimination by relatively slight adjustments of either income or outgoings, assuming that need for specific action will not be obviated by events following a normal course in the process of settling down. Favourable financial effects are, for instance, not unlikely to ensue from upwards of 50,000 new consumers supplied in the eastern area in 1948-49. The reports of the area boards and the Central Authority suggest that the new organization and management of the industry has been commenced and will continue along lines yielding increasingly valuable service to the community, which will reflect much credit on numerous people who have deployed considerable skill, care and effort to ensure a successful scheme of operations.

## THE JUSTICES OF THE PEACE ACT, 1949

This important statute, which embodies the decisions of Parliament on the recommendations of the Roche and du Parc reports, received the Royal assent on December 16, 1949. It is to be brought into force, as a whole or in parts, on such day or days as may be appointed by Order in Council (see s. 45).

There are forty-six sections and seven schedules. The body of the Act is divided into six parts as follows:—

Part I (ss. 1 to 9). Provisions as to individual justices.

Part II (ss. 10 to 15). Commission of the Peace, Constitution of Courts and Rules of Procedure.

Part III (ss. 16 to 24). Magistrates' Courts Committees and Justices' Clerks.

Part IV (ss. 25 to 28). Administrative and Financial arrangements.

Part V (ss. 29 to 35). Stipendiary Magistrates.

Part VI (ss. 36 to 46). Miscellaneous and General.

It is provided by s. 10 that there shall be a commission of the peace for every county and for every county borough and also for certain boroughs. These latter are of four kinds:—

(a) Those which at December 31, 1948, had a separate commission and a population of 35,000 or more.

(b) Those which at that date had a separate commission and court of quarter sessions with a population of 20,000 or more.

(c) Those which at that date had a separate commission and court of quarter sessions and are specially included by the Lord Chancellor because he thinks it desirable to do so because of the help the borough quarter sessions give in the administration of justice in the county and of historical or geographical reasons. The borough council concerned must apply for the Lord Chancellor so to order. The time limit for applications is two months from the passing of the Act or such later date as the Lord Chancellor may fix.

(d) Those to whom, after the passing of the Act, a separate commission is granted under s. 156 of the Municipal Corporations Act, 1882, on a petition by the borough council at a time when the borough's population is 65,000 or more.

For the purposes of the section "county" means the administrative county except in the case of London where the county is to be as constituted under s. 40 (2) of the Local Government Act, 1888. This leaves the City of London as a separate jurisdiction, unless action is taken under s. 40 (3) of that Act.

The third schedule gives lists of boroughs which retain their existing commissions in categories (a) and (b) above referred to, and the second schedule (which occupies nine pages of the

printed copy of the Act) deals with, to quote s. 10 (7), measures for "the preservation and adaptation of existing commissions of the peace, and other purposes consequential on the changes effected by the foregoing subsections." It contains sections relating to petty sessional divisions, existing clerks to the justices, coroners, and sheriffs and its provisions cannot be summarized within the space at our disposal.

To go back now to the beginning of the Act: it is provided by s. 1 that no one shall be appointed a justice of the peace by the commission for any area unless he resides in that area or within fifteen miles of it. The Lord Chancellor, if it is in the public interest, can give exemption from this requirement. Apart from certain justices who are such by virtue of legal office held by them and who are specified in the first schedule, power is given to the Lord Chancellor to remove from a commission any justice who has not the necessary residential qualification.

Section 2 amends ss. 18 (7) and 18 (8) of the Local Government Act, 1933. The mayor of a borough shall not, as such, continue as a justice for the borough for the year after he ceases to be mayor. A mayor of a borough without a separate commission is to be a county but not a borough justice, and a mayor of a borough with a separate commission is to be a borough but not a county justice.

Section 3 makes an important amendment by disqualifying absolutely, for the purposes of proceedings brought by or against, or by way of appeal from a decision of, a local authority or any of its committees or officers, a justice who is a member of such local authority. He must not sit, in such proceedings, either at quarter sessions or in a magistrates' court. The section is widely drawn and should be carefully read by any who may be affected by it. Subsection (3) enacts similarly for the City of London. By subs. (4) proceedings brought by a police officer are not, for that reason alone, to be within the prohibition.

Section 4 deals with the supplemental list for those justices (other than any who have held high judicial office) who are seventy-five years old or more, and for those who apply to have their names entered therein. The Lord Chancellor may also add to the list any whose age or infirmity or similar disability makes it desirable that they should not act judicially, and any who decline or neglect adequately to play their part in so acting.

Those on the supplemental list may not, as justices, do anything except the signing of documents authenticating the signatures of others, the taking and authenticating of declarations not made on oath, and the giving of certificates of

facts within their knowledge or of their opinions on any matter.

If during the first five years of the section's operation the Lord Chancellor thinks that the strict enforcement of the seventy-five age-limit will cause a shortage of experienced justices in any area he may make exceptions.

Section 7 replaces s. 54 of the Solicitors Act, 1932, and enacts that no solicitor nor any partner of his shall act in any way in any proceedings before the justices for any area if the said solicitor is himself a justice for that area, unless he is on the supplemental list or is for the time being excluded under s. 4 of the Justices of the Peace Act, 1906.

There is in subs. (4) a special exception for the partners of a solicitor justice where the latter holds office in London by virtue only of being mayor of a metropolitan borough.

Section 8 makes an important new provision for the payment of travelling and lodging allowances to justices performing judicial duties more than three miles from their usual abode. Regulations are to provide the necessary machinery for making and regulating such claims, and duplication of expense claims by those performing other functions as well is forbidden. A justice following a course of instruction under an approved scheme is to be deemed to be performing duties as a justice.

We revert now to Part II. Section 11 deals specially with courts and justices in the City and in the county of London. It removes the juvenile and domestic courts from the City jurisdiction, transferring those proceedings to the justices and courts of the county (including the metropolitan magistrates' courts). It also repeals s. 42 of the Metropolitan Police Courts Act, 1839 (which restricts the taking of fees by county justices in areas covered by the metropolitan courts) but limits the justices, outside those courts, to dealing only with such classes of cases as the Secretary of State may by order prescribe. Linked with this repeal is that in s. 24 of the provisions of s. 7 of the Vestries Act, 1850, which required and authorized the town clerk of a metropolitan borough to attend on and advise justices, as their clerk, in proceedings for the recovery of rates.

Section 12 regulates the composition in non-county boroughs of the borough licensing committee, the confirming authority and the compensation authority under the Licensing (Consolidation) Act, 1910, and contains other provisions about the licensing authorities in such boroughs.

Section 13 introduces another important innovation. Rules are to prescribe the maximum number of justices who may sit as a court of quarter sessions or as a magistrates' court, and in every petty sessions area (this is defined in s. 44 (1) as being either a borough with a separate commission, a county not divided into petty sessional divisions, or a petty sessional division of a county) a chairman and one or more deputy chairmen are to be chosen by the justices, from amongst their number, by secret ballot. In a borough the mayor, as such, no longer is to have the right to preside. This choice of chairman and deputy chairman is for the adult courts only, and does not affect quarter sessions or juvenile courts or any adult court when a stipendiary magistrate is sitting.

Section 14 provides that rules made under the second schedule, Children and Young Persons Act, 1933, may fix a special age limit for members of juvenile court panels.

Section 15 is of great importance. It provides for the setting up, for magistrates' courts, of a rules committee to regulate and prescribe the procedure and practice of magistrates' courts and their clerks. The number to be appointed to the committee is to be determined by the Lord Chancellor, but it is in any event to include the Lord Chief Justice, the President of the Divorce Court, the Chief Magistrate at Bow Street Magistrates' Court

and at least one justices' clerk, one practising barrister and one practising solicitor. Certain of the matters to be governed by the rules are particularised in subs. (4).

We come now to Part III beginning with s. 16 which requires the establishment for every county and county borough of a magistrates' courts committee. There is a proviso that two or more such areas may establish a joint committee, that a quarter sessions division of a county may have its own separate committee, as may a non-county borough with a separate commission and a population of 65,000 or more. The fourth schedule is devoted to the necessary details for establishing these committees and for their constitution and procedure.

One important duty of these committees is, with the approval of the Lord Chancellor, to make and administer schemes for courses of instruction for the justices of their areas (s. 17).

By s. 18 they are also empowered in the case of counties to submit to the Secretary of State proposals for the division of the county into petty sessional divisions. Alternatively the Secretary of State may require the committee to review the existing division of the county and to submit to him fresh proposals, or their reasons for recommending no change. The section contains details as to who shall be consulted and other relevant matters. In this connexion s. 29 (7) should be noted. It provides that when, outside London, a stipendiary magistrate is appointed the Secretary of State shall, if necessary, constitute the area for which he is appointed (or the part in which the county justices have jurisdiction) a petty sessional division or divisions of the county concerned.

Another duty to be discharged by the magistrates' courts committees is that of appointing justices' clerks. This is dealt with in s. 19, which goes on to prescribe various matters affecting the salary and conditions of service of such clerks and their staff. An important provision is contained in subs. (13) by which s. 49 (1) of the Licensing (Consolidation) Act, 1910, is extended to prevent any clerk appointed after s. 19 comes into force from acting professionally at any licensing sessions, whether in his own district or not, and also to prohibit him from preparing any notices or forms in connexion with any licensing proceedings.

Section 20 is concerned with the controversial question of the qualification of justices' clerks. An exception is made in the case of existing clerks with no professional qualification by which, if the appointment is made before January 1, 1960, and if the candidate has had ten years' experience as a clerk to a stipendiary magistrate, to a metropolitan stipendiary court (this is a new way of describing the metropolitan police courts) or to one of the City of London magistrates' courts, or as an assistant to such a clerk or to a justices' clerk he may be appointed a clerk to justices. The magistrates' courts committee and the Secretary of State must agree that there are special circumstances making any such appointment a proper one.

The general requirement is to be that the person appointed shall be a barrister or solicitor of not less than five years' standing. The section also provides in certain circumstances for allowing an assistant to a justices' clerk to be treated as if he were an articled clerk and to be admitted a solicitor, and there appears to be nothing to prevent him, once he has been so admitted, from acting in every way as a solicitor though his practical training may have been only such as comes the way of any assistant to a clerk to justices. The control is vested in the Law Society, for without the certificate which they may grant under s. 20 (3) (c) the would-be solicitor can get no further.

The section is to regulate the appointment of all justices' clerks, and s. 159 (2) of the Municipal Corporations Act, 1882,

which has so far governed the qualifications of clerks to borough justices, ceases to have effect.

Section 21 enacts, in effect, that for the future the clerk to the justices (and in this section this includes clerks to stipendiary magistrates, and to the metropolitan and City of London courts) is always to be the collecting officer for his court, and all periodical payment orders, unless the court specially directs otherwise, are to be made payable through him. Orders previously made directing payment to be made through some third person are to be treated as if they directed payment to the clerk as collecting officer, due notice being given, where necessary, to the person liable to make the payment. Section 30 (4) of the Criminal Justice Administration Act, 1914 (which authorizes a percentage payment to collecting officers) is repealed.

Superannuation of justices' clerks and their staffs is dealt with in s. 22, the provisions of which replace those of s. 20 of the Local Government Superannuation Act, 1937. Part I of the fifth schedule adapts, where necessary, the provisions of the 1937 Act. The new section applies both to permanent and to temporary employees, but not to those whose employment is "of a casual nature." The Act does not attempt to draw the line between temporary and casual employment.

The position of existing and former justices' clerks and those employed by them is regulated by s. 23. Salaries must be fixed with due regard to any additional burdens thrown on the clerk by making him collecting officer, and to any additional remuneration formerly paid for such work. Whole time collecting officers, who are not clerks, and their employees, are to be absorbed into the staff of the justices' clerk.

Part IV deals first (s. 25) with the duty of county and borough councils to provide the necessary buildings, furniture and equipment for courts and to pay other necessary expenses properly incurred by the magistrates' courts committees. There is to be consultation between the committee and the council or councils concerned as to what is to be provided, as to salaries to be paid and so on. The decision on such matters is to be that of the committee, and a council who is aggrieved by such a decision may appeal to the Secretary of State. These latter provisions are in s. 26.

Section 27 introduces a radical change in the law as to the applications of fines and other sums imposed, or ordered to be paid, by courts of summary jurisdiction. We cannot reproduce here all the details of the section but the principle is that all such amounts shall be paid to the Secretary of State, after repayment of fees which are deducted by virtue of the Criminal Justice Administration Act, 1914, s. 5 (1) (a), (b) and (c).

The Secretary of State, in return, will reimburse the responsible authorities who pay for the upkeep of the courts and for their staffing for the net cost each year to which they are put in discharging their functions under Parts III and IV of the Act. There is a special provision covering the position when the amount received by the Secretary of State is less than the net cost (see subs. (3) and (4)).

Certain sums are, by subs. (7), not to be paid to the Secretary of State. These include sums payable by statute to the Commissioners of Customs and Excise. Section 27 should be read carefully by all who are concerned with these matters.

Section 28 is concerned with the method of making good any default by a justices' clerk who fails to pay to the Secretary of State any sum due to be so paid under s. 27. The responsible authority concerned is to make good any such default, and is to be entitled to take security with respect to possible defaults as if the sums in question were money belonging to the authority and entrusted by them to someone not in their employ.

Part V begins with s. 29, the appointment of stipendiary magistrates outside London. The section does not affect appointments under certain local Acts set out in s. 30 relating to Staffordshire, Merthyr Tydfil, Pontypridd and the county borough of Salford.

Under s. 29 a barrister or solicitor of at least seven years' standing may, on the recommendation of the Lord Chancellor, be appointed a stipendiary magistrate for:—

- (a) Any borough with a separate commission of the peace.
- (b) The whole or part of any county exclusive of such borough as aforesaid.
- (c) A "joint district" comprising two or more areas for which separate appointments might be made under (a) or (b).

No appointment either in the first instance or to fill a vacancy is to be made except on a petition presented to the Secretary of State by the borough or county council or councils concerned. More than one stipendiary may be appointed for the same area, and a stipendiary must not sit as a member of a court of quarter sessions for a county wholly or partly within his area, or act for any petty sessional division other than the division or divisions in that area.

Section 31 makes certain provisions about appointments of stipendiary magistrates (this includes metropolitan stipendiary magistrates) under other Acts. It allows the appointment of solicitors of not less than seven years' standing, it abolishes the requirement in the Metropolitan Police Courts Acts, 1839, s. 3, that barristers appointed shall have practised as such during the seven years prior to their appointment, and the similar provision as to deputies in the Stipendiary Magistrates Act, 1869, s. 2. Finally (subs. (4)), it is provided that appointments shall be on the recommendation of the Lord Chancellor, with the exception of Salford, where the Chancellor of the Duchy of Lancaster is substituted.

Sections 32 and 33 deal respectively with the salaries, and with the retirement and superannuation of stipendiary magistrates. The general age limit is to be seventy-two, with power in the Secretary of State to extend to seventy-five. The seventy-two age limit does not apply to metropolitan stipendiary magistrates, but these may count former service as a stipendiary elsewhere for pension purposes. Their retiring age in practice is seventy, although there is no statutory provision.

By s. 34 the Secretary of State has power, within certain defined limits, to direct the place, date and time of the sittings of stipendiary magistrates other than those appointed before this section comes into force, and the metropolitan magistrates, whose sittings are dealt with in former Acts.

Section 35 makes the authority who pays a stipendiary magistrate's salary responsible for paying any deputy lawfully appointed to sit for a stipendiary.

Amongst the miscellaneous and general provisions in Part VI are the transfer to the Lord Chancellor of responsibility for recommending appointments of recorders and of the paid chairman and deputy chairman at the County of London Quarter Sessions (s. 39 (1)), the abolition of the requirement that a billiard or music and dancing licence must be signed or signed and sealed by the majority of justices granting it (s. 41), and the interpretation section (s. 44) in which we note that "magistrates' court" means a court of summary jurisdiction or examining justices, and includes a single examining justice.

The seven schedules occupy from page forty-six to page eighty-one, inclusive, of the printed copy of the Act. We have dealt incidentally with some of these and must leave their closer study to our readers as occasion demands.

## CORROBORATION BY DEFENDANTS' STATEMENTS IN COURT

(CONTRIBUTED)

In this article it is proposed to consider how far magistrates may treat a statement made in court by the defendant, before the case against him has been completed, as part of the evidence against him and whether such a statement should be recorded when depositions are being taken.

One will often have heard a defendant, when asked if he wishes to question a witness for the prosecution, start to make a statement or sometimes he will interrupt at some stage of the examination-in-chief of a witness. If in such remarks the defendant admits something as to which the prosecution have not produced evidence, it is submitted that such admission may be taken into account by the court as part of the case against him (even to the extent in some instances of providing corroboration that would otherwise be lacking), provided that such statement was not elicited by improper questioning by the court and can reasonably be treated as corroboration. For example, where the Crown witnesses have not identified a shoplifter but the defendant admits, when asked to cross-examine, that he was at the counter at the material time, or where a husband, on a cruelty summons, admits striking his wife but "she nagged me to hit her," the court might well regard such remarks as additional evidence against him.

In *R. v. Watson*, (1851) 3 Carr & Kir 111, the defendant, during his preliminary examination before a magistrate, was asked at the end of the evidence-in-chief of a Crown witness if he wished to put any questions to him. The defendant did not ask him any questions but made a statement, which was taken down by the magistrates' clerk and signed by the magistrate but not by the defendant. No caution had been then given to the defendant. Patteson, J., held that this statement was not evidence in itself, but anyone who heard the defendant make it might give evidence of it, refreshing his memory from what was written down, but the defendant should have been told it was not the proper time for him to make a statement. *Halsbury*, 108 (g), states that all that is material should be put in the deposition; if the defendant during the examination makes a statement that is material, it should be taken down. There is a note to the same effect in *Stone*, 1949, p. 29.

It seems clear that voluntary observations made by a defendant during the preliminary examination may be given in evidence at his trial, and it is submitted that a magistrates' court trying a case may likewise take into account any self-incriminating observations by the defendant during the evidence against him. The defendant, however, should be warned, if he starts making a statement, that it is not the proper time for him to make it (*R. v. Watson*, *supra*). If he says something which is ambiguous, it is suggested that the magistrates should not put a construction unfavourable to him upon it, but that he may be questioned as to what he meant by it if (and only if) he later elects to give evidence.

It is plain that any statement elicited by improper questioning by the Bench should be disregarded, but it is not so plain what is improper questioning. A direct question by the examining magistrate, on a charge of concealment of birth, after the statutory caution, as to what the accused had done with the child was held to be improper (*R. v. Berriman* (1854) 6 Cox C.C. 388). It is possible, however, that properly-worded observations (not questions) from the Bench suggesting to an unrepresented defendant matters on which it is important that he should, if he wishes, question the witness, would not cause an incriminating

reply from the defendant to be regarded as inadmissible. Any such observations should, however, be few and made with great care. Readers of this journal can no doubt realize what would constitute properly-worded observations. In particular, one notes s. 6 of the Summary Procedure (Domestic Proceedings) Act, 1937, by which a court trying domestic or bastardy proceedings "shall" ascertain from unrepresented parties what are the matters about which their own witness may be able to depose or on which the other side's witness ought to be cross-examined and shall then itself put the proper questions. Further, by r. 9 of the Summary Jurisdiction (Children and Young Persons) Rules, 1933, the juvenile court may, for the purpose of questioning a Crown witness on the offender's behalf, question the offender himself in order to bring out or clear up any point arising out of any assertions made by him when asked to cross-examine. It is suggested that answers made by the defendant in response to properly-worded questions asked by the Bench pursuant to s. 6 or r. 9 may be treated as part of the evidence in the case. Obviously any such statement or answer made by him out of court to a witness could be proved in the normal way as part of the case against him. An admission made by the defendant in the witness-box is likewise evidence against him. (It is appreciated that here the case to answer has already been found.) Is there any reason for rejecting a statement, not improperly obtained or permitted to continue, merely because it is made by the defendant during the interval of time between the start and the close of the case against him and from the dock instead of the witness-box or some place outside the court?

It is emphasized that the conclusion reached above is that any statement is admissible; what weight the magistrates will attach to it is entirely a matter for them. In some cases they may think it fair to ignore it altogether.

Whether such a statement can be treated as corroboration would seem to depend on the wording of the statute which makes corroboration necessary. The statute may provide that the defendant shall not be convicted solely on the evidence of one witness as to certain matters (Perjury Act, 1911, s. 13; Road Traffic Act, 1930, s. 10). Or it may provide that the evidence of a witness shall be corroborated by other evidence (Bastardy Laws Amendment Act, 1872, s. 4; Children and Young Persons Act, 1933, s. 38). It is suggested that a statement by the defendant in court might entitle a court to find a case against him in cases of the former kinds (*i.e.* where he must not be convicted solely on the evidence of one witness), where there had been only one witness called for the Crown, but the defendant's statement was a clear corroboration of a material part of that witness's evidence.

Where, however, a statute requires that the evidence of a witness shall be corroborated by other "evidence," it may be argued that that means that another person must testify on oath against the defendant. In *Johnson v. Pritchard* (1933) (97 J.P.N. 754) a mother seeking an affiliation order was the only witness but she produced some letters as corroboration, swearing that they were in the defendant's handwriting. It was held that an affiliation order should not have been made on that evidence as the complainant was corroborating herself. This case was followed with reluctance in *Moore v. Hewitt* (1947) (111 J.P. 483).

It would seem, therefore, that if a defendant in an affiliation case, when asked to question a witness or by interruption, makes some statement which can be treated as corroboration, the

magistrates must not act on it simply from hearing it themselves but some person in court (other than the mother), who heard it made, should be called as a witness. It is appreciated that this sounds almost absurd but it appears to be the logical result of

the decision in *Johnson v. Pritchard*, *supra*. A like course should apparently be followed in statutes similar to s. 4 of the Bastardy Act. In other cases the magistrates could apparently act on the evidence of their own ears as to what was said. G.S.W.

## AMENITY

[CONTRIBUTED]

Not unnaturally, in the course of a century of industrialization, environmental amenity has taken second place in many respects, even after making due allowance for the great increase in the comfort of living that has accrued from the industry. But over the years came realization in increasing measure that something was being lost, and so the preservation of amenity in its modern sense began. First came emphasis on the preservation of the countryside from industrial spoilage and then the less tractable problem of urban amenity.

The more obvious deficiencies of the earlier days of the industrial revolution have been made good in the provision of sewers and sewage disposal, refuse collection and its disposal, abatement of public nuisances, and many other sanitary services, which have been supplemented by parks, open spaces, art galleries, and the like. The more recent shortcomings of increasing industrial prosperity have not yet been overcome. In this group are the pollution of rivers with noxious industrial effluent and mine water and of tidal streams with untreated sewage, the pollution of the atmosphere with smoke and grit, and the heaping of spoil banks—matters which in most cases can only be remedied at great cost. A recent speaker speaking of one of our great ship-building rivers into which untreated sewage is discharged at points right up to the limits of the tidal reach some fourteen miles from the sea, said that the purification of the sewage would amount to a luxury which we could not afford.

In the daily round of getting fed, clothed, warmed and entertained, such problems await a change of social habit and the growth of social tone. Reformers work a lifetime to achieve their successes in this field.

The truth is that amenity can cost money—even to have air as fresh in the town as in the country would cost a prohibitive sum, and one suspects that the preservation of amenity has always had to be a matter of degree. In *Foli v. Devonshire Club* (1887) 3 T.L.R. 706, Chitty, J., said, "... a mere amenity such as that of a view cannot be protected ...". Today the protection of a view open to the public might be achieved under the Town and Country Planning Act, 1947, if the cost of compensation could be met. So far as a private view goes, it might be protected by the purchase of the land over which the eye roams, but, apart from expense, the requirements for public use or exploitation of at least some of the land would come first in case of need.

Amenity is not much mentioned in the Town and Country Planning Act, 1947. One example is in s. 31, which provides for the regulation of advertisements "so far as appears to the Minister as expedient in the interests of amenity ...". Examples from other Acts include the definition in the Petroleum (Consolidation) Act, 1928,—"amenities" in relation to any place are to include any view of or from that place" (this in connection with the siting of petrol pumps); and in s. 1 of the Local Authorities (Publicity) Act, 1931, by which a local authority may contribute to any approved organization established for collecting and collating information in regard to "the amenities ... of the British Isles."

So far as the courts are concerned with amenity, they define the evil rather than enforce specific remedy. In *R. v. Bolton*

*Recorder, Ex parte McVittie* [1939] 4 All E.R. 236, the facts were that a cinema had been extensively damaged by fire in 1939, so that there remained "a lot of twisted iron stanchions standing by a residential road in Bolton on what is now a weed-overgrown site." The Bolton Corporation had obtained an order from justices in petty sessions, following application under s. 58 of the Public Health Act, 1936, from which the owner had appealed. The order was confirmed by the recorder. The Divisional Court to which the matter was taken on *certiorari*, discharged the rule *nisi* and the owner appealed to the Court of Appeal.

In that court, Scott, L.J., at p. 238 said: "The appellant has put before us photographs of the site showing what it looks like from various points of view from the public street ... it is obvious from these photographs that ever since the theatre was burned down in 1930 it has been a dreadful eyesore in the street of Bolton where it is. Fortunately, since the Act of 1936 was passed, proceedings on the ground of injury to amenity of a neighbourhood are now possible." After observing that the form of summons under the nuisance sections of the Public Health Acts gave no guide "... I can see no difficulty in the practical effect of the construction put upon this section by the Divisional Court, because, if the unsightly cause is comparatively a small thing, which may nevertheless be very unsightly, the words 'restore or repair' give the owner an ample indication of what he has to do. In any case, he knows what his building was, and if he wants to re-erect it ... he can do so under the form of order made. On the other hand, however, if he recognizes that it is not good business to re-erect that old building, then he is not entitled to keep the site disfiguring the neighbourhood, as it does, at the expense of the inhabitants of the town."

Goddard, L.J., said (at p. 240): "If this s. 58 which we are considering were a section which applied to any sort of building which offended against the amenities of a district—in other words, if it were a case dealing merely with the aesthetics of a building—I think that very likely the owner might be entitled to say: 'My ideas of art are different to yours. If you object to this building of mine as offending against the amenities of the district, tell me in what way you think it does offend. Otherwise I shall not know whether to repair it in neo-Gothic or bastard-Tudor style.' That however is not what the section says. The section deals only with a building which offends against the amenities of the neighbourhood because of its ruinous and dilapidated condition ... Mr. McVittie must have known perfectly well that all he was required to do was to clear away the rubbish, which is what the section says."

As the words of Goddard, L.J., indicate, amenity in planning goes further than in s. 58 of the Public Health Act. It inclines more to the positive. For example, s. 33 of the Town and Country Planning Act, 1947, empowers a local planning authority to require the proper maintenance of waste land, etc. If it appears to the authority that the amenity of any part of their area or of any adjoining area is seriously injured by the condition of any garden, vacant site or any other open land in their area, subject to any directions of the Minister of Town and Country Planning, the authority may serve in the prescribed manner upon the owner and occupier of the land a notice

requiring such steps for abating the injury as may be specified in the notice to be taken within the period specified by the notice. The owner or occupier can appeal to a court of summary jurisdiction and in an appropriate case the court is empowered to vary the notice if in the opinion of the court the requirements of the notice exceed what is necessary (s. 23 (4)). In this case the justices' "idea of art" may be different from that of the owner or occupier and different again from that of the planning authority, but what the justices think prevails. The act of the justices is administrative, albeit expressed in judicial form.

The highest authority in the matter of amenity would appear to be the Minister of Town and Country Planning. The Minister of Health is also partly responsible. Section 142 of the Housing Act, 1936, requires a local authority in preparing any proposals for the provision of houses or in taking any action under that Act to have regard to the beauty of the landscape or countryside and the desirability of preserving works of architectural, historic or artistic interest, and to comply with such directions if any in that behalf as may be given to them by the Minister of Health.

But the Minister of Town and Country Planning is the Minister who approves development plans, and to whom appeals from the refusals of local planning authorities to grant planning permissions or from the conditions attached by them to permissions, are to be made. This is an administrative appeal. The Minister can hold a local inquiry into the matter if he so desired. If the applicant or the local planning authority so desire, the Minister is required by s. 15 of the 1947 Act to afford an opportunity to each of them of appearing before and being heard by a person appointed by the Minister for the purpose. Other than in this regard the Minister can deal with the appeal in whatever way he thinks fit. He may reverse or vary any part of the decision of the local planning authority, whether or not the appeal relates to that part, and deal with the application as if it had been made to him in the first instance, and his decision is final.

Decided cases do not much help the Minister, and he cannot draw upon judicial definition (not that he would be bound by any such), except so far perhaps as Sutton, L.J., went in *re Ellis and the Ruislip-Northwood U.D.C.* (1920) 83 J.P. 273. This was a case concerning certain huts used for human habitation and the application of building byelaws. The judge said: "The word amenity is obviously used very loosely; it is, I think, novel in an Act of Parliament and appears to mean pleasant circumstances, features, advantages . . ." This "novel" use was in s. 54 (1) of the now repealed Housing and Town Planning Act, 1909.

This opportunity of appealing to the Minister is much exercised. On November 25 last, the Permanent Secretary to the Ministry gave out that appeals were being made at the rate of 400 a month, and that the Minister was concerned that he was allowing about forty per cent. of them. As a great number of these are on amenity grounds, a perusal of the Minister's reasons for allowing them is interesting. Amongst older decisions are the following: the confirmation of refusal by the local authority for an amusement arcade in a business zone primary catering, on the grounds that the arcade could not fail to have a detrimental effect on the amenities of neighbouring properties; the refusal of permission for the erection of a second-hand wooden bungalow not for the use of agricultural workers in an area in which the local authority proposed only to allow the erection of buildings for the agricultural population on the grounds that the bungalow would be an example of sporadic development of a kind which was likely to result to injury to the general amenity of the countryside; the dismissal of an appeal against a decision not to allow the provision of a dairy business on dwelling-house property because such was likely to be a source of annoyance to neighbouring residents and must

inevitably lead to further developments. Amongst the newer decisions are the following: the allowance of an appeal against a decision not to allow a bakery extension in an area proposed for a residential zone, the Minister considering that the area was well suited for industry, having railways carrying heavy traffic on two sides and an important traffic route on another; the refusal to allow extension of a small brewery which had become established in an area which had developed residentially, on the grounds of the injury to amenity and future development of the district which would otherwise result; the allowance of an appeal for using a former mission hall in a residential suburban district for a light industry, the Minister agreeing that the proposed use would be incompatible with the residential character of the neighbourhood, but considering that no detriment to amenity or interference with redevelopment would be occasioned in the near future, and granting permission for ten years. The infinite variety of that kind of amenity which comes before the Minister in this way is apparent. The question is not: In what way does it offend?—Lord Goddard's "... shall it be planned in neo-Gothic or bastard-Tudor style . . ." The question is rather, what will the man in the street, that critical average of public taste consider best? (when he has got used to it, for in most cases he would be quite inarticulate until some time after the question has demanded its answer). Therein would appear to be the wisdom of the appeals going to the Minister in spite of his bias as a politician.

What amenity is, or rather, what would adversely affect the amenity of this or that place for the people in it, is primarily an administrative question. In a political climate as we have in this country, almost every important matter of public concern is a concern of party politics, though in matters of amenity the ultimate political responsibility may be at an impracticable remove. Most probably a fine art commission would no more be able to deal with day to day amenity than would a judge in a court of law, and neither the commission nor the judge would be so well fitted as a carefully chosen administrative tribunal. Whether the Minister can qualify as a carefully chosen tribunal can be at least partly answered by the absence of demand for any other, notwithstanding the provisions of s. 16 (4) of the Act. Probably the Minister's success is in great measure due to the informality and cheapness of the appeal and also to his adoption (although not required by the Act to do so) of one of the recommendations of the Committee on Minister's Powers in that the Minister gives reasons for his decisions. If serious objection were taken, question time in the House of Commons, not to mention other opportunities in that House and in Lords, would have been busier on the topic.

A very recent example of the disciplinary value in the giving of reasons for decisions is seen in the case of *Pilling v. Abergele U.D.C.* (1949) reported in *The Times* of December 16 last. The case, decided on a Case Stated, was concerned with s. 269 (1) of the Public Health Act, 1936, which provides: "For the purpose of regulating . . . the use of moveable dwellings the local authority may grant licences authorizing persons to allow land occupied by them . . . to be used as sites for moveable dwellings." The District Council refused a licence on the ground "that the site is unsuitable because such use would be detrimental to the amenities of the district particularly on account of the close proximity of other dwellings."

The Lord Chief Justice said: "If they (the local authority) had refused to grant a licence without giving any reason, it might have been difficult for the appellant successfully to have appealed against such refusal. But if in such a case the local authority gave reasons and the reasons showed that they had taken into account in making their decision matters which they ought not to have taken into account, a court, on appeal, could deal with the matter."

If an application for planning permission for such a use had been refused for a like reason, an appeal would properly lie on grounds of amenity to the Minister, and (although no appeal to the courts would be possible, except as to any irregularity

at any public inquiry held in connexion with the appeal to the Minister) the value to the public from the Minister giving reasons for his decision as against the opposite of merely deciding "yes" or "no," is at once obvious. "EPHESUS."

## WEEKLY NOTES OF CASES

### COURT OF APPEAL

(Before Bucknill, Singleton and Denning, L.J.)

#### CRISP FROM THE FENS LTD. v. RUTLAND COUNTY COUNCIL

January 11, 1950

*Town and Country Planning—Planning permission—Conditions imposed—Interpretation of conditions—Town and Country Planning Act, 1947 (10 and 11 Geo. 6, c. 51), s. 14(1).*

APPEAL from the Divisional Court of the King's Bench Division. By s. 14 (1) of the Town and Country Planning Act, 1947: "... where application is made to the local planning authority for permission to develop land, that authority may grant permission either unconditionally or subject to such conditions as they think fit, or may refuse permission."

A local planning authority to whom application had been made to use two stables as a store preparation room for the manufacture of potato crisps granted permission subject to the condition that: "The use of the building shall be confined to the manufacture of potato crisps or any use within Class III of the Town and Country Planning (Use Classes) Order, 1948." Class III relates to use as a light industrial building, which is defined as meaning "an industrial building (not being a special industrial building) in which the processes carried on or the machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit." The authority gave as their reasons for imposing the above condition that it "is necessary to ensure that the building shall not be used for general industrial purposes, as such uses would be liable to be detrimental to the amenities of the locality." Following this permission the building was used for the manufacture of potato crisps, and smells, fumes, noise and smoke were thereby caused, so that the use was not a light industrial use. The occupiers contended that the condition imposed in the permission allowed manufacture of potato crisps, whether such use was a light industrial use or not, but allowed other uses only if they were light industrial uses. The planning authority contended that the condition allowed the manufacture of potato crisps only if carried on in such a way as to constitute a light industrial use, and they issued an enforcement notice to prevent the user in question, as being an infringement of the condition. The occupiers appealed to justices who found that the condition had been infringed, and the occupiers then appealed to the Divisional Court of the King's Bench Division, who upheld the decision of the justices.

*Held*, in interpreting the condition it was permissible to look at the reasons for imposing it, which the planning authority had a statutory duty to state, and, as it appeared from the reasons that it was desired to exclude user for general industrial purposes, the condition must be interpreted as confining the manufacture of potato crisps to such manufacture thereof as constituted a light industrial use. *Appeal dismissed.*

Counsel: *Megarry* for the appellants; *Heseltine* for the planning authority.

Solicitors: *A. L. Phillips & Co.*; *Peacock & Goddard*, agents for the clerk of the Rutland county council.

(Reported by C. N. Beattie, Esq., Barrister-at-Law.)

### KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Lynskey and Sellers, JJ.)

#### R. v. SOMERSET JUSTICES: *Ex parte* ERNEST J. COLE & PARTNERS, LTD. AND ANOTHER

January 17, 1950

*Case Stated—Quarter sessions—Refusal to state—Mandamus—Order not involving conviction—Order under Town and Country Planning Acts—Criminal Justice Act, 1925 (15 and 16 Geo. 5, c. 86), s. 20 (4), as substituted by Administration of Justice (Miscellaneous Provisions) Act, 1938 (1 and 2 Geo. 6, c. 63), s. 19 (1), sch. II.*

APPLICATION for order of *mandamus*.

At a court of summary jurisdiction justices for the county of

Somerset made an order under the Town and Country Planning Acts, not involving a conviction, against the applicants, Ernest J. Cole and Partners, Ltd., and another, at the instance of the Somerset county council as planning authority. The applicants appealed to quarter sessions where the decision of the justices was confirmed by the appeals committee. The applicants did not then apply to the appeals committee to state a Case, but they did so some three weeks later, and the application was refused. The applicants then applied to the Divisional Court for an order of *mandamus* directing the appeals committee to state a Case.

*Held*, (i) that the only power to order *mandamus* on refusal by quarter sessions to state a Case arose under s. 20 (4) of the Criminal Justice Act, 1925 (as substituted by s. 19 (1), sch. II, of the Administration of Justice, etc., Act, 1938), but that section was confined to matters involving a conviction and to an appeal against conviction by a court of summary jurisdiction; (ii) that, apart from that section, the Divisional Court had no inherent right to issue *mandamus* compelling quarter sessions to state a Case, though in special circumstances *mandamus* would issue compelling quarter sessions to state a Case which they had already agreed to state. The application must, therefore, be refused.

Counsel: *Neligan* for the applicants; *Squibb* for the county council; *J. F. E. Stephenson* for the appeals committee.

Solicitors: *Arbeid & Co.*; *Sharpe, Prichard & Co.*, for *Harold King, Taunton*; *Colliver-Bristow & Co.*, for *P. A. Selborne Stringer, Trowbridge*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

### COUGHTREY v. PORTER

January 16, 1950

*Gaming—Gaming machines—Order for destruction—Validity—Warrant issued by justice—Occupier not on premises—Occupies later arrested and admitted to bail—Gaming Act, 1845 (8 and 9 Vict., c. 109), ss. 3, 8—Criminal Justice Administration Act, 1914 (4 and 5 Geo. 5, c. 58), s. 21.*

CASE STATED by Nottingham city justices.

At a court of summary jurisdiction at Nottingham an information was preferred by the respondent, Frederick Drayton Porter, a police officer, charging the appellant, William George Coughtrey, with unlawfully using certain premises for the purpose of money being received in connexion with a contingency relating to a game, namely, operations on three "fruit" machines, five clock machines, and a "numbers" machine, contrary to s. 1 of the Betting Act, 1853. Another information charged the appellant that the Pleasure Park situate at Trent Lane in the city of Nottingham, of which the appellant was the occupier, was kept and used as a common gaming house within the meaning of the Gaming Act, 1845. A justice issued his warrant under s. 3 of the Act of 1845 in the statutory form provided in the Act authorizing the search of the premises and the arrest of persons resorting thereto. The police then entered the place specified in the warrant, and seized the machines, but they did not find the appellant on the premises. Later in the day the appellant went to the police station, and a police officer purported to execute the warrant by formally arresting him. The appellant was admitted to bail under s. 21 of the Criminal Justice Act, 1914, and later he was served with the summons under the Betting Act, 1853. When he was before the justices, the appellant was asked to plead to the summons under the Act of 1845, but he declined to do so. The justices allowed the matter to proceed without any plea being entered and without hearing any evidence, and they convicted and fined the appellant for the offence under the Act of 1853 and made an order for the destruction of the machines.

*Held*, that the order for the destruction of the machines was wrong and must be quashed on the grounds (i) that the appellant was not before the justices by virtue of the warrant which had been issued under the Act of 1845 as, not having been arrested on the premises, he had not been arrested under that warrant, and also because by his release the effect of that warrant expired; (ii) that the only power which justices had to order the destruction of articles of gaming was under s. 8 of the Act of 1845 and, for the reasons stated, he had not been arrested under that Act; (iii) that the justices had not heard any evidence to prove that the machines in question were articles of gaming.

Counsel: J. G. S. Hobson for the appellant; Vernon Gattie for the respondent.

Solicitors: Sidney C. Elphick, for H. B. Clayton, Son & Ellis, Nottingham; Sharpe, Pritchard & Co., for J. E. Richards, town clerk, Nottingham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

# PACEY v. ATKINSON

January 17, 23, 1950

*Solicitor—Drawing instrument relating to legal proceeding—Un-qualified person—"Expectation of any fee, gain or reward"—Need to prove contractual right to recover fee—Solicitors Act, 1932 (22 and 23 Geo. 5, c. 37), s. 47 (1).*

CASE STATED by Darlington justices.

At a court of summary jurisdiction at Darlington six informations were preferred by the appellant, Frederick William Pacey, acting on behalf of the Law Society, against the respondent, Victor Cecil Atkinson, charging him with offences under s. 47 (1) of the Solicitors Act, 1932, as amended by the Solicitors Act, 1941, s. 23 (1).

The information preferred against the respondent in each case charged that, contrary to the section, he "not being a barrister, or a duly certificated solicitor, solicitor in Scotland, writer to the signet, notary public, conveyancer, special pleader, or draftsman in equity," drew, or, alternatively, prepared, an instrument relating to a legal proceeding for or in expectation of a fee, gain or reward. The respondent, who was not qualified under s. 47 (1), was a rent and debt collector. He carried on business in Darlington, being employed by creditors and landlords to collect sums due to them, and he had authority from his principals to institute and carry through proceedings in the Darlington county court for the recovery of sums due. He was remunerated by a payment of two and a half per cent. on the sums which he collected. In the cases referred to in the informations he had drafted particulars of claim in county court proceedings, and received or expected to receive two and a half per cent. of the sums recovered whether the proceedings were heard in court or not. Apart from his agreed remuneration he neither received nor expected to receive any reward for drawing or preparing particulars of claim or for any work in connexion with the proceedings or for attendance in court. No objection had ever been taken to the procedure which he followed.

The justices were of opinion that the respondent had drawn the instruments relating to a legal proceeding specified in the informations, but a majority were satisfied that he did not do so directly or indirectly for or in expectation of any fee, gain, or reward. They, accordingly, dismissed all the informations, and the prosecution appealed.

Held, that the word "expectation" in s. 47 (1) of the Act of 1932 clearly indicated that there need not be any legal or contractual right to recover the fee or reward and was wide enough to include a mere expectation or hope that some reward would be forthcoming as a result of the action taken. The offences were, therefore, proved, and the case must go back to the justices with a direction to convict on all the informations.

Counsel: Cammings-Bruce for the appellant; Quintin Hogg for the respondent.

Solicitors: Hempsons; Butt & Bowyer, for J. F. Latimer & Hinks, Darlington.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., and Lynskey, J.)

# ZEIDMAN v. OWEN

January 19, 1950

*Gaming—Use of premises—Persons resorting—"Pari-mutuel or pool betting transactions"—Football pools agency—Betting and Lotteries Act, 1934 (24 and 25 Geo. 5, c. 58), s. 3 (2).*

CASE STATED by the appeals committee of London Quarter Sessions.

An information was preferred by the respondent Owen, a police officer, before a metropolitan magistrate charging the appellant, Zeidman, with using premises as a place where persons resorting might effect pool betting transactions, contrary to s. 3 (2) of the Betting and Lotteries Act, 1934. The magistrate convicted the appellant and fined him £25. The appellant appealed to quarter sessions, who found that during certain evenings of March, 1949, a number of people went to the premises in question and handed to the appellant sums of money and football pool coupons, and that the appellant had for some years run a football pool agency for various pools.

It was contended for the appellant that, having regard to a dictum of Lord Greene, M.R., in *Elderton v. United Kingdom Totalisator Co., Ltd.* ([1945] 2 All E.R. 624; [1946] Ch. 57; 109 J.P. 571), football pool competitions were not pool betting transactions within the meaning of s. 3 (2) of the Act of 1934. It was contended

for the prosecution that that dictum was obiter and not necessary for the decision in *Elderton's* case, and that the law was that laid down in *Stovell v. Jameson* ([1939] 4 All E.R. 76; [1940] 1 K.B. 92); 103 J.P. 369.

Quarter sessions held that the contention of the respondent was correct, and that the appellant was guilty of the offence charged. The appellant appealed to the Divisional Court.

By the Betting and Lotteries Act, 1934, s. 3 (2): "Save as is permitted by the preceding subsection, no person shall use any premises as a place where persons resorting thereto may effect pari-mutuel or pool betting transactions."

Held, that football pools were betting transactions, and must be regarded as having been referred to in s. 3 (2) of the Act. Quarter sessions had, therefore, come to a correct decision, and the appeal must be dismissed.

Counsel: Curtis Bennett, K.C., and Gordon Hardy for the appellant; Melford Stevenson, K.C., and Vernon Gattie for the respondent.

Solicitors: Wilkinson, Howlett & Moorhouse; The Solicitor, Metropolitan Police.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Humphreys and Lynskey, JJ.)

# JOHNSON v. YODEN AND OTHERS

January 19, 1950

*Housing—Building licence—Sale of house—Excessive price charged by builder—Separate bargain relating to excess—Charge of aiding and abetting against solicitors acting for vendor—Building Materials and Housing Act, 1945 (9 and 10 Geo. 6, c. 20), s. 7 (1) (5).*

CASE STATED by Dover borough justices.

At a court of summary jurisdiction at Dover, an information was preferred by the appellant, James Alexander Johnson, town clerk of Dover, charging the respondents, Henry Wallace Youden, George Henry Youden and George Ronald Marr Brydome, with aiding, abetting, counselling and procuring one Dolbear to commit an offence against s. 7 (1) of the Building Materials and Housing Act, 1945. The allegation against Dolbear was that he was a person who had obtained a licence from a local authority to build a house, to which licence a condition had been attached that the total price charged on a sale of the house should not exceed £1,025, and that he had contravened the condition of that licence by charging a purchaser a total price of £1,275. Of that offence Dolbear was convicted. Dolbear had instructed the respondents to act as his solicitors.

According to the facts found by the justices, Dolbear deliberately concealed the fact that he was taking the extra £250 from the purchaser and had refused even to give him a receipt. None of the respondents knew anything about this additional £250 before April 6, 1949, and neither Henry Youden nor George Youden knew anything about it at any time. On April 6, 1949, the purchaser's solicitors wrote to Brydome, who was dealing with the matter: "I duly received your letter of March 26 informing me that you are ready to settle at any time and that the amount payable on completion is £925 (£100 having already been paid on deposit). I think I ought to let you know why I have not as yet proceeded to completion. It is that I have felt compelled to report to the town clerk what I consider to be a breach by your client of the provisions of s. 7 of the Building Materials and Housing Act, 1945." Brydome then approached Dolbear, who told him that he had received another £250 from the purchaser, that he had placed the sum in a separate deposit account, and that it was to be spent on payment for work as and when he (Dolbear) would be lawfully able to execute it in the future on the house on behalf of the purchaser. The next day Brydome called on the purchaser to complete.

The justices dismissed the information as against all three respondents. The prosecutor appealed.

Held, that the justices were right in dismissing the information as against Henry Youden and George Youden, as, in order to render a person guilty of aiding and abetting an offence, though he need not actually know that an offence is being committed, he must at least know the essential matters which would constitute the offence, and the justices had found on good grounds that neither of these two respondents at any time knew those matters, but Brydome ought to have known that the information given to him by Dolbear related "to [a] transaction with which the sale or letting [was] associated" within s. 7 (5) and that, accordingly, the transaction would amount to a contravention of s. 7. So far as he was concerned, therefore, the case must go back to the justices with a direction to convict.

Counsel: Paget, K.C., and E. L. Bradley for the appellant; John Bassett for the respondents.

Solicitors: Wilkinson, Howlett & Moorhouse; W. C. Crocker.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

## REVIEWS

**Supplement to Oke's Magisterial Formulist.** 13th edition. By J. P. Wilson. London: Butterworth and Co. (Publishers) Ltd.; Shaw and Sons, Ltd. Price of main work and supplement £4 5s., supplement alone 10s. 6d.

This year, *Oke* celebrates its centenary, and this fact alone is a testimonial to its value. There cannot be many justices' clerks' offices in which *Oke* is not in constant use. It is manifestly essential that such a work should be kept as nearly up to date as possible, and as it is nearly three years since the last edition was completed this supplement is certainly due. There has been so much legislation in recent years affecting the work of magistrates that many new forms have had to be provided, many others altered and others discarded. The plan of the supplement is to relate its contents to the main work so that the two can be used as one book of reference.

Mr. Wilson, in his modest preface, in referring to forms under the Criminal Justice Act, 1948, says that most of these have been prescribed and adds: "It is hoped that those drawn by the writer will prove equally reliable." We have no misgivings on that score, as Mr. Wilson's previous work is the best guarantee.

**Parker's Election Agent and Returning Officer.** Fifth Edition. By Oscar E. Dowson and H. W. Wightwick. London: Charles Knight and Co., Ltd. Price 63s. net.

**Parliamentary Elections.** By A. Norman Schofield. London: Shaw and Sons, Ltd. Price 52s. 6d. net.

Older readers will remember how local government books and forms used to be available from the firms of Shaw and Sons and Knight and Co., each dealing with the same topic so that the official or practitioner could take his choice. The *Overseer's Manual* and *Overseer's Handbook* come to mind, as also rival versions of *Annotated Model Byelaws*. So far as we have noticed, this convenient rivalry had fallen off in the last thirty years, and it is therefore pleasing to receive, for review, in the same week, two substantial textbooks upon the very live topic of parliamentary elections, one from each of these old established firms. The learned authors of both have been in a difficulty not of their own creating, in that the law with which they had to deal was consolidated so recently as November, 1949, so that the final corrections in the proofs can hardly have been made before it became common knowledge that a general election would take place very soon; moreover, even in that short interval the government be-diddled the publication by introducing and carrying an Act for abolishing the autumn register. This has in *Shaw's* book been dealt with by an addendum slip and in *Knight's*, to which its main purpose is not so directly relevant, by making appropriate corrections in the text. Each book is thus up to date, and ready to be used in the campaign now opened by those for whom it is intended. *Knight's* book has the advantages and disadvantages of being a new edition of a long established standard textbook, which first came into being seventy years ago as a handbook for election agents. Hence its title, and the feature, curious at first sight, that it plunges at once into treatment of the election agent's status and duties, followed by those of the returning officer and candidate. Here there is a clue to a fundamental difference between the two works. *Shaw's* book, which is wholly new, and follows a separate book by the same author upon local government elections, has a wider scope in that it treats fully of the process of registering voters, whereas *Knight's* book begins at the point where the register has been completed, and an actual election is in progress or is contemplated. It is partly (not altogether) for this reason that *Shaw's* book is roughly twice the length, more than a thousand pages as against five hundred odd. Not altogether, because Messrs. Shaw have used a smaller page and clearer type. This clarity is further helped by *Shaw's* putting all case references in footnotes, whereas *Knight* embeds them in the text. For the not unimportant purpose of finding quickly what is wanted, we should say that *Shaw's* book is to be preferred, but when the subject is once found the treatment in *Knight* seems in most cases rather fuller. We have tested this at various points, e.g., the polling day to be fixed, with the objections to a Friday or a Saturday; the removal of disorderly persons from the polling station; and the law of British nationality upon which *Knight's* book has a full note, useful for other purposes as well as for elections. On the other hand, treating, corrupt practices, *ad hoc genus omne*, are so well handled by both learned authors that, having read more than once what each has to say, we are quite unable to assert that either is the better. A feature of *Knight's* book which seems worth special mention is that the learned editors have attempted to deal fully and in one place with the new provisions of s. 63 of the Representation of the People Act, 1949, previously s. 42 of the Act of 1948, whilst *Shaw's*

handling of the section is under different headings where its provisions apply. Even as this review is being written, the meaning of the section is being publicly argued in the newspapers, by a former Lord Chancellor and a former Attorney-General, as well as by other learned and unlearned persons. As against this reason, if it be a reason, for preferring *Knight*, it is fair to emphasize that *Shaw's* book deals very fully and competently with the pre-election processes of registration, which are important to many of our readers. The duties of the local government officer, who is a returning officer or deputy returning officer, are short and sharp, whereas the duties of the registration officer are spread over a long time. In this *Knight* does not profess to help him, whereas *Shaw* gives him all the help he can reasonably ask, based upon the learned author's practical experience as town clerk of an important borough. We have thought it right to review both books as quickly as we could after publication, in view of the imminence of the general election, and have therefore not been able to peruse either so carefully as we should like; we have had to be content with testing them one against the other, in regard to selected topics, and endeavouring to find a basis to advise our readers which is to be preferred. In this process we have failed to find anything misleading in either work, notwithstanding the haste with which both must have been completed at the present juncture. We feel reasonably confident that the local government officer who has duties to perform in relation to elections, and the practising lawyer who has (or hopes to have) business arising from something that goes wrong, can safely rely on either work within its scope. *Shaw*, as we have said, covers more ground whilst *Knight* appears to us to cover in more detail the field which it has chosen. One or other book is almost a necessity for everyone concerned, since they have at present no rivals which are up to date. The public or party official whose appropriation for books is adequate, or the practitioner who scents election business in the offing, will, if he is wise, provide himself with both.

**Archbold's Pleading Evidence and Practice in Criminal Cases.** Thirty-second edition. By T. R. Fitzwalter-Butler, and Marston Garcia. London: Sweet and Maxwell Ltd. Price £4 4s. net.

Like other text books dealing with criminal law and its administration, *Archbold's Criminal Pleading* has been materially affected by the provisions of the Criminal Justice Act, 1948, and this fact alone would necessitate a new edition. Supplements are useful, and we are glad to note that the publishers intend to continue their supplementary service; but constant users of a well-tried text book are glad when they can find all they want without having to look at a supplement for recent changes in the law, and the excellent noter-up to the thirty-first edition has served its purpose.

The learned editors have preserved the general plan of the book, adding new matter in its appropriate place, but they have thought it well to relegate to an appendix those portions of the Criminal Justice Act, 1948, which are of an administrative character and do not deal with practice and procedure in the courts. It has also been necessary, as a result of the new statute, to re-write the chapter on punishment. It has also been thought well to revise the section on "Conspiracy," a subject upon which there have been some important recent decisions.

We cannot imagine that any practitioner or official having business at assizes or quarter sessions could hope to dispense with *Archbold*. Its reputation as a work of authority is established, and the present learned editors will assuredly maintain it.

With this new edition is supplied "A Table of Penalties for Criminal Offences" prepared by a member of the bar. To be of use, such a table must be absolutely clear and accurate, since its purpose must surely be to supply a means of quick reference when there is either no time or no opportunity for consulting the faithful *Archbold* itself. Unfortunately, this leaflet does not appear to us sufficiently reliable. We quote three examples: against the entry "Fine" the amount, in courts of summary jurisdiction, is stated to be not exceeding £25, with a reference to s. 4 of the Summary Jurisdiction Act, 1879, and not exceeding £100 for indictable offences. Of course, there are many summary offences punishable by fines exceeding £25. A footnote to this item does little to elucidate the position. Similarly, it is not correct to say that six months is the maximum imprisonment for summary offences; several statutes authorize a longer sentence. A footnote reads "N.B. A court of summary jurisdiction may after conviction commit an offender to quarter sessions for sentence if it considers its powers are inadequate for sentence." This general statement, without limitations, cannot be supported, and there should at least be a reference to s. 29 of the Criminal Justice Act, 1948, and the classes of offence to which it applies.

## MISCELLANEOUS INFORMATION

### INTERNATIONAL UNION OF LOCAL AUTHORITIES— BRITISH COMMITTEE

#### BETERETTE

##### Centre for the apprenticing of ex-T.B. patients

Mlle. Dr. Gak, Medical Officer of the Centre and Andrew Cisterre, Technical Director, contributed an article to "Techniques Hospitalières" on the Beterette training centre for ex-T.B. patients, extracts of which are translated below.

All those concerned with the study of T.B. are in agreement that the majority of former T.B. patients can, and should, work, but if the patient desires to avoid a relapse he must also enjoy a standard of life sufficiently high to ensure good and abundant food, hygienic accommodation, and regular medical supervision. The necessity for a post-treatment centre where a real professional training under medical supervision can be given to young people is abundantly clear. In 1945, the principal inspector of technical education shared this conviction and undertook to study the question of the creation of a centre of apprenticeship for tuberculous patients in co-operation with the health organizations. At the end of 1945 a consultation with the Regional Union of Social Insurance at Bordeaux which had, in 1938, decided to create a centre of rehabilitation for the tuberculous. This organization owned property obtained in 1939, the remodelling of which was in hand. The work was held up on account of requisitioning in December, 1940, but in October, 1945, this requisitioning was lifted.

At the beginning of 1946 the necessary work was begun and in December, 1946, Beterette received its first pupils. Three months afterwards the establishment of seventy-three male students, all living in, was complete. All students admitted are voluntary.

The Centre of Beterette which is situated about three miles from Pau enjoys a good climate and proximity to this important urban centre. The property covers sixty acres, including a park providing opportunities for walks and games in the open air in agreeable surroundings.

The admission case paper includes not only particulars of an administrative character but medical and professional information. The medical dossier must be prepared by the medical officer of the sanatorium or clinic who treats the patient, or the Medical Officer of the Department of Social Security, this includes a detailed account of the antecedents of the candidate, the evolution of his tuberculous illness and his condition at the date of admission to Beterette. Further, it is required that the candidate should be able to undertake four hours of work daily without any risk of relapse. The work is carried out under medical supervision, which follows the normal sanatorium methods of periodical tests.

On their arrival at Beterette the patients are admitted to the sick ward where for two days a thorough clinical examination is carried out. If the results of these examinations are favourable and the comparison between the reports on the admission dossier and those taken on entry do not show any worsening of the condition of the patient, he is admitted to his apprenticeship. If, on the other hand, a worsening of the condition is shown he is returned to the sanatorium or hospital from which he came.

Since the entrance examination has been carried out in all its thoroughness the number of relapses has been reduced from twelve per cent. to 3.3 per cent. Correspondingly, the number of proposed entrants who have been rejected for apprenticeship has increased from six per cent. to twenty per cent. The question of recruitment seems to be very important. It must be carried out in such a way as to avoid delay in the acceptance for apprenticeship and thus discourage the pupil. The period of apprenticeship in the Beterette Centre is from one to two years, although this period may appear long and onerous, it has been proved to be correct by experience. Out of ten relapses which have occurred in a period of eighteen months, two occurred after five months of apprenticeship and two after fifteen months. All the others occurred between the period of six to nine months of entering apprenticeship.

Of all the pupils who have followed the course of apprenticeship only two have not received authority to work on leaving. These are counted as relapses.

Mention is often made of the lethargic habits and distaste for work which the sick contract as a result of spending periods in a recumbent position. The joy which they manifest on being told of an increase in their hours of work is therefore greatly to their honour.

The teaching departments are—1, radio electricity; 2, clock and watch making; 3, saddlery and Morocco manufacture; 4, photography (touching up, operating, colouring); 5, clerical occupations (accounting, secretarial).

These occupations which involve precision operations and demand a perfect production can, to a certain extent, free the trainees from

the imperative law of modern times, namely, intensive output which is incompatible with the condition of the former T.B. patient.

Such occupations represent only a fraction of those which are possible in the case of an ex-T.B. patient. It would be dangerous if all schools taught the same subjects. In each of the five sections at Beterette the number of pupils is limited on account of material circumstances. Pupils all commence with four hours of work. The progress is regulated by the principal according to carefully worked out principles.

During the hours of opening of the workshops and class-rooms every pupil who is not at work must be under treatment. At the beginning of his stay the pupil works four hours a day and has four hours of treatment, of which two and a half must be silent periods of rest and one and a half hours in the morning during which he is allowed to study on his extending chair. In general, at the end of three months he is promoted to stage No. 2 which includes five and a half hours of work daily and two and a half hours of silent rest.

At the end of a variable period he is subjected to time-table No. 3 which includes seven hours of work daily and one hour only of silent rest. Finally, a short time before leaving the establishment he gives up all treatment and all rest periods and carries out eight hours of work daily. On Saturday afternoon the two last groups do not work but spend that period in rest.

It is not possible to have a normal apprenticeship of three years; this is because of financial reasons.

It may be mentioned that the National Office for Mutilated and ex-Service Men, which has had long experience in the technique of professional re-education, considered that in most cases two years are required to learn a trade thoroughly whilst working full-time from the beginning. The duration of the stay at Beterette varies according to the condition of health of the pupil, the profession chosen, the degree of education (school and professional) on arrival at the Centre, and the necessity to subject the pupils to examinations which qualify them for apprenticeship. The period at Beterette varies from twelve to twenty-four months.

The success of a post-sanatorium apprenticeship is not complete unless two objectives have been achieved, namely, knowledge of a trade and the physical possibilities of practising it. Bearing in mind the professions and trades taught at Beterette, and the special conditions of apprenticeship during the post-cure period, good results can only be obtained with careful recruitment, i.e., candidates must be physically fit on arrival at the Centre and suitable as regards their manual dexterity and intellectual standards for the particular training proposed. These two conditions alone can ensure regular and rapid progression in the hours of work.

The candidate is admitted to the professional section of his own choice if his request agrees with the conclusions of the psycho-technical examination. The first three months, which are regarded as a period of probation, provide the opportunity to rectify any mistakes in allocation to particular studies. From the beginning, a special study is made of the demeanour of the pupils in class, in the workshops, and in their daily life, and if the initial prognostication is found to be incorrect, the pupil is given an opportunity in another department. Such changes generally have happy results. Sometimes, those who have no particularly strong inclination towards a special vocation, spontaneously ask for a change to another department some days after their arrival.

The teaching staff are, themselves, former patients. Consequently, they understand the needs of the pupils. This factor ensures a particularly happy psychological atmosphere and ensures congenial conditions of work and confidence in the future. The curriculum is based on the requirements of the professional certificates in respect of the particular trades taught. Continuous adaptation to the physical possibilities of the pupils is necessary. At the beginning of the period of training the periods in class are more frequent than the sessions in the workshop. Special steps are taken to give rational instruction, and so to organize the education that the pupils (who are sometimes little adapted for theoretical study) absorb knowledge unconsciously which, in the first instance, seems to them to be superfluous and loaded with difficulties.

As far as possible the pupils take examinations at the end of their apprenticeship with the pupils from the ordinary schools of the Department. Out of a total of sixty-seven sitting for the various examinations, sixty-two passed, including seven special and ten ordinary distinctions. They obtain certificates amongst those occupying high positions on the examination list. The winning of a certificate or diploma gives the pupil confidence and hope in the future and he feels that he is reinstated as a valuable member of society. It facilitates his success in obtaining a good situation. The scheme of apprenticeship, which is rigid in its principles but flexible in its methods, demands for its success not only material organization adapted to the conditions

of work but also considerable and costly equipment in order to avoid any wasted time, together with qualified and devoted teaching staff who have faith in the work.

#### THE REGISTRAR-GENERAL'S STATISTICAL RETURN FOR THE SEPTEMBER, 1949, QUARTER

Provisional figures for England and Wales in the Registrar-General's Quarterly Return show that the number of live births registered was 183,278, giving a rate of 16.6 per 1,000 total population, which may be compared with 17.5, 20.0 and 19.8 in the third quarters of 1948, 1947 and 1946 respectively. Of the births registered, 94,260 were males and 89,018 females, a proportion of 1,059 males to 1,000 females. The average proportion for the three quarters of the ten years 1939-1948 was 1,060 males per 1,000 females. The number of illegitimate births, included in the total, was 9,248 or 5.0 per cent. of the total births registered, compared with 10,186 or 5.3 per cent. in the corresponding quarter of 1948.

The number of deaths registered during the quarter (101,207), giving a rate of 9.2 per 1,000 total population, compares with 101,545 deaths and a rate of 9.3 for the corresponding quarter of 1948, and an average death rate of 9.3 for the three quarters of the five years 1943-1947. The births registered exceeded the deaths by 82,071, the corresponding increases for the three quarters of the years 1946, 1947 and 1948 being respectively 112,642, 119,409 and 90,313. The number of persons married during the quarter was 227,390, which was 6,136 more than the average for the corresponding quarters of the preceding five years 1944-1948 and represented a marriage rate of 20.6 persons married per 1,000 total population.

#### BIRTHS, MARRIAGES AND FERTILITY IN 1944

The Registrar-General's Statistical Review for 1944 completes the war-time series of volumes of Civil Tables. It records a slight rise in the birth and marriage rates as compared with the year 1943, and a continuation of the downward trend in the still-birth rate.

**Births:** There were 751,478 live births in 1944, representing a rate of 17.7 per 1,000 total population. This was an increase of 1.5 per thousand over the previous year, and maintained the improvement seen since 1941. Illegitimate live births numbered 55,173 compared with 43,709 in the previous year, or 7.3 and 6.4 per cent. of the total live births respectively.

There were 21,306 still-births, representing a rate of twenty-eight per 1,000 live and still births compared with 21,262 and a rate of thirty per 1,000 in the previous year. This improvement has been maintained in later years, the provisional rate in 1948 being twenty-three per 1,000.

**Marriages:** In 1944 there were 302,714 marriages. Although this was 6,282 more than in the previous year, it remained lower than the average for the ten years 1929-38 which was 333,306. The marriage rate in 1944 was 14.3 persons married per 1,000 total population compared with 14.0 the year before and an average of 16.5 in the ten years 1929-38.

**Fertility:** 43.2 per cent. of the legitimate confinements during 1944 were to mothers with no surviving previous children; 29.8 per cent. to mothers with one surviving previous child and 13.4 per cent. to mothers with two.

**Divorces:** The number of decrees nisi made absolute during 1944 was 12,312 compared with 9,999 during the previous year and a yearly average of 5,733 from 1933 to 1942.

During the year, 14,360 petitions were filed at the Divorce Registry in London and 4,609 at the District Registries. Of the London petitions, 5,677 related to childless marriages, 4,994 to marriages with one child and 2,468 to marriages with two children. 7,401 of the marriages had lasted for more than ten years and of these 2,131 had lasted 20 years or more.

#### IDENTITY OF PRICE CONTROL INSPECTORS

##### Board of Trade Reminder to Traders

The Board of Trade's attention has been drawn to a newspaper report of a case in which it is stated that a Surrey draper was induced to part with goods to a person who represented that he was a Board of Trade Inspector.

It is desired to make it known as widely as possible that inspectors appointed under the Goods and Services (Price Control) Acts all carry a certificate of their appointment which it is their practice to produce on disclosing their identity. Traders should require any person who claims to be a Price Control inspector to produce his certificate of authority, and they should refuse to comply with any requests or requirements on the part of a person claiming to be such an inspector unless and until such a certificate is produced.

## CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,

*Justice of the Peace and  
Local Government Review.*

DEAR SIR,

#### RENT RESTRICTION

With reference to P.P. 5 at p. 782 and P.P. 3 at p. 794 of vol. 113, I am in entire agreement with your contention that a rent tribunal (or any body of first instance) must apply its mind to all the relevant issues of fact which are necessary (including in the case of a rent tribunal the question of change of identity) to enable it to discharge its proper functions.

The latter P.P. was limited to the facts of the particular application with which the tribunal had dealt, and which had formed the subject of the former P.P. As a result of the tribunal taking the view that it did upon the facts of that particular application, the landlord has a further opportunity of raising the question of change of identity before the county court judge, whose function it may then be to determine the question.

The decision of the tribunal on this particular application was a majority decision; and the dissenting view suggested that the issue of change of identity should be considered and dealt with, although the landlord, who was legally represented, had not taken this point before the tribunal at all.

Yours faithfully,

G. REPAUMONT,

Clerk to the Tribunal.

Cambridge.

## PERSONALIA

#### APPOINTMENTS

Mr. J. Edward Knight, one time senior probation officer for the Dartford division of Kent and now county children's officer for Staffordshire, has been appointed to the Home Office children's department's inspectorate for the Midland region.

Mr. Roy Gwynllim Runswick has been appointed probation officer for the city of Portsmouth. Mr. Runswick is twenty-seven years of age and has been employed on relief and welfare work with the International Voluntary Service for Peace.

Mrs. L. E. Moore-Weedon and Mr. W. D. R. Hopkins have been appointed probation officers for the city of Leicester. Both have recently completed diploma courses in social studies under the Home Office training scheme.

## NEW COMMISSIONS

#### YORKS (NORTH RIDING)—continued

Air Commodore Henry George Crowe, C.B.E., M.C., Thornton-le-Dale, Pickering.

Edna Annie Dearlove, The Gables, Dishforth, Thirsk.

Theodore Bertram Dixford, M.A., Newby Wiske Hall, Northallerton.

Thomas Bonner Earle, Bolton Grange, Scorton.

Vice-Admiral Jack Egerton, C.B., Sheriff Hutton Park, York.

James Finnegan, 5, Queen Street, South Bank.

Mrs. Ellen Armstrong French, 20, Exeter Street, Salbarn.

Stephen Noel Furness, Otterington Hall, Northallerton.

Major Harold Galloway, 18, Uppang Lane, Whitby.

Percy Eason, 22, Onnesby Bank, Ormesby.

Wilfred Ian Edward Hickman, Westcroft, Eton.

Lady Serena Mary Barbara James, St. Nicholas, Richmond, Yorks.

Lieut.-Col. Henry Cyril Harker Illingsworth, M.C., Headon Lodge, Brompton-by-Sawdon.

John Wilfred Lawren, 304, Normanby Road, South Bank.

Lieut.-Col. Charles Norman Littleboy, D.S.O., M.C., T.D., Howe, Thirsk.

Mrs. Doris Mary Peiers Dilton, Romanby, Northallerton.

Ralph Henry Scrope, The Frutage, Yarm.

John Henry Siddall, Fairfields, The Shaw, Leyburn.

Mrs. Florrie Stephens, 236, Coatham Road, Redcar.

Richard Knightley Storn, Fernleigh, Robin Hood's Bay, Whitby.

Harold Terry, Slingsby, York.

Robert William Thompson, M.A., Ayscote School, Bedale.

John Todd, 5, P'Anson Road, Richmond.

Mrs. Edyth Mary Webster, Wymbrook, Scailby.

Jeffrey Overend Wood, O.B.E., Gorse Cottage, Strensall, York.

Mrs. Pamela Wrightson, Greencroft, Cleasby.

## LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 9.

### KILLING OF SWANS

Two men, one of whom said he had been a wildfowler for twenty-nine years, appeared recently at Spalding petty sessions charged with unlawfully and maliciously killing four swans, the property of His Majesty, the King, the same being the subject of larceny at Common Law, contrary to s. 41 Malicious Damage Act, 1861.

For the Director of Public Prosecutions, it was stated that one defendant was seen to shoot and pick up a hare on the bank of the River Glen late in the evening. He said to a prosecution witness: "It's only a hare . . . I want swans." The police were informed and later the same evening both defendants were stopped in a car. Two guns, a hare and four dead swans were found in the car. The swans which were still warm were not marked or ringed in any way.

An expert witness was called to say that he had studied ornithology in the district for forty years; he had seen the heads of the swans in question and identified them as being of the mute type. The swans in the area were domesticated.

One defendant, a labourer, pleaded guilty, but the wildfowler pleaded not guilty, and urged that no offence had been committed. He quoted an article from the *Shooting Times* in which a correspondent was informed that swans which did not belong to the King or a private owner could be shot.

The wildfowler was found guilty, and previous convictions for poaching and possessing firearms without a licence were proved against both defendants; the wildfowler had also been previously convicted for killing a swan.

The Chairman stated that the Bench had seriously considered sending both defendants to prison, but they had ultimately decided to substitute the maximum fine. Each defendant, therefore, would be fined £20 and in default would go to prison for two months. In addition they would each pay £7 6s. 3d. costs.

### COMMENT

Swans occupy a position in our jurisprudence of some importance for, being animals *ferae naturae* they become, at Common Law, the property of any person who takes, tames or reclaims them until they regain their natural liberty. As early as 1592 swans were the subject of judicial consideration, the Case of Swans (1592) 7 Co. Rep. 15b being, as *Halsbury* puts it, marked by much learning.

The white swan, not marked, in open and common rivers is a royal fowl and belongs to the King. A subject may have property in a white swan, not marked, in his manor or private waters, but if the swan escapes the King's Officers may seize it. *Halsbury* adds that swans on the Thames are all marked and belong, as is widely known, to the King, the Dyers' Company and the Vintners' Company.

What is not so well known is that cygnets are appropriated in the proportion of three to the owner of the cock to two to the owner of the hen.

Feminists may well raise their eyebrows at this arbitrary division, and those who lack ornithological knowledge and may foresee difficult questions of parentage arising will be relieved to know that the cock swan: "holdeth himself to one female and is the emblem of an affectionate and true husband to his wife above all other fowls."

Section 41 of the 1861 Act provides that anyone who unlawfully and maliciously kills or maims any . . . bird, beast or other animal, not being cattle but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement for any domestic purpose, shall be liable on conviction to six months' imprisonment or a fine of £20. For a second conviction under the section an offender may be awarded twelve months' imprisonment.

Poultry, swans and pigeons which serve for the food of men are the subject of larceny at Common Law.

(The writer is indebted to Mr. Guy F. Smallwood, clerk to the Elbow justices, for information in regard to this case.) R.L.H.

No. 10.

### SALE OF TUBERCULOUS MILK

On September 28, 1949, a producer/retailer of milk appeared before the Holford justices charged with having unlawfully exposed for sale for human consumption the milk of a cow which to his knowledge had given tuberculous milk, contrary to s. 25 of the Food and Drugs Act, 1938.

For the prosecution, it was stated that on July 21, 1949, an officer of the county council informed the defendant that milk retained by him had shown positive evidence of being infected with tuberculous bacilli. During a visit to the defendant's shippon on the evening of

July 24, a county council sampling officer noticed a cow which appeared to him, a layman in such matters, to be emaciated, and during the visit the defendant told the sampling officer that he was not satisfied with the condition of two of his cows, one of which was the one which the sampling officer had noticed as being emaciated.

The sampling officer observed milk from this cow being taken to the adjoining dairy and samples of milk from the cow were microscopically examined, and showed positive evidence of tuberculous bacilli. The defendant had not called in a veterinary surgeon on being told on July 21 about the tuberculous results of the milk retained by him.

The justices were of the opinion that the defendant could, with ordinary care, have ascertained the fact that the particular cow had given tuberculous milk, and convicted.

The defendant was fined £10 and ordered to pay costs and an order was made by the magistrates cancelling his licence to sell milk by retail.

The defendant appealed against the conviction and the order to the Appeals Committee of Anglesey quarter sessions held on November 25, 1949, when the appeal was dismissed with costs.

### COMMENT

Mr. Idris Davies, deputy clerk of Anglesey county council, to whom the writer is indebted for this report, points out that the case is of interest as there have been very few successful prosecutions under s. 25, Food and Drugs Act, 1938, owing to the difficulty cast on the prosecution of having to relate milk from a particular tuberculous cow in a herd to an exposure for sale on a specified date.

It will be remembered that subs. (1) (a) of s. 25 provides that anyone who sells or offers or exposes for sale for human consumption the milk of any cow which to his knowledge has given tuberculous milk, or is suffering from emaciation due to tuberculosis or from tuberculosis of the udder is guilty of an offence, and by subs. (2), it is provided that in proceedings under this section a defendant shall be deemed to have known that a cow had given tuberculous milk or was so suffering as aforesaid if he could, with ordinary care, have ascertained the fact.

By s. 79 of the Act a first offender is liable to a fine of £20 and for a second offence the maximum penalty is three months' imprisonment and a fine of £100.

By s. 22 (4) of the Act, it is provided that the court before which a person registered as a retail purveyor of milk is convicted of an offence under any of the provisions of the Act relating to milk may, in addition to any other penalty, cancel his registration as such.

It can be confidently anticipated that the Milk and Dairies Regulations, 1949, which came into operation on October 1, 1949, will give medical officers of health extended powers to restrict the sale of infected milk.

These regulations contain detailed provisions applicable to the production of milk, the treatment, handling and storage of milk and with regard to infection of milk and if they are followed scrupulously the evils which have sprung from the consumption of infected milk during the war years should rapidly diminish. R.L.H.

### PENALTIES

Bristol Quarter Sessions—January, 1950—stealing postal drafts value £66 15s. 10d.—twelve months' imprisonment. Defendant, a twenty-nine year old postman, attributed his trouble to mortgage repayments in respect of a house which were beyond his means.

Cheltenham—January, 1950—intending to commit an act of disturbance calculated to provoke a breach of the peace—bound over for twelve months. Defendant, a forty-five year old married man with five children, was found on frequent occasions spying on courting couples.

Oxford—January, 1950—(1) drunk and disorderly, (2) striking a policeman—(1) fined £1, (2) fined £2. Defendant, aged twenty-one, was celebrating New Year's Day in the High Street with 2,000 other revellers. He made two lunges at a police constable.

Salisbury—January, 1950—stealing 10 cwt. of lead value £40—fined £10.

Salisbury—January, 1950—receiving the same lead—fined £25.

The twenty-nine year old thief was a married man with three children employed in a blacksmith's shop; he had one previous conviction for taking a motor-cycle without the owner's consent. The thirty-year old receiver, a married man with one child, had twice appeared at the juvenile courts for stealing, and in 1938 was sent to borstal for housebreaking, larceny and receiving. He had since gone straight for twelve years.

## PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

## 1.—Bankruptcy—Disqualification—Clerk to local authority.

I shall be obliged if you could let me know whether the fact that a person is an undischarged bankrupt debars him from holding the office of clerk to a parish council.

EVANS.

Answer.

No, but it is manifestly a most improper appointment.

## 2.—Criminal Law—Larceny—Compensation before information laid—Effect on prosecution.

In a recent case before a magistrates' court in this district a servant was charged with larceny of certain articles from his employer. The matter had been previously reported to the police by the employer, but in between the time of such report and the laying of the appropriate information by a police officer as informant, the employer had received a sum of money in compensation for the articles from the servant. The payment was not made in consideration of any favour to be shown to him over the matter by the employer. When the matter came before the justices, a solicitor for the servant submitted that the matter having been settled between the employer and servant prior to the commencement of proceedings (to which the employer was not a party except as a witness) there was no case to answer. The justices thereupon dismissed the case. I shall be glad of your learned opinion as to whether such submission and decision were correct in law, with authorities, if any.

S.X.Y.Z.

Answer.

In our opinion the fact that the owner of the property accepted compensation does not affect the right to prosecute, and the case should have been heard. The general principle is that even where there has been an agreement not to prosecute the prosecution may still be undertaken. The matter is dealt with in *Archbold's Criminal Pleading*, 31st edn., pp. 1200-1201. In the present instance there was not even an agreement not to prosecute.

## 3.—Guardianship of Infants—Illegitimate child—Mother dead—Application by Polish putative father.

I should be glad of your opinion as to whether the custody of an illegitimate child can properly be given by the justices to a father who is a Pole domiciled in England. The English mother has died, and the circumstances are otherwise favourable to such a course. The question being purely whether the nationality of the father is a bar.

SLUG.

Answer.

Although we know of no direct authority on the point, we think the better opinion is that the Guardianship of Infants Acts, 1886 and 1925, do not apply to illegitimate children except where it is expressly provided that they do. In this case, therefore, we do not think the man can apply under the Acts, though he might apply to the High Court, not under the statutes, but in respect of the Court's inherent powers. We do not consider the man's nationality to be an obstacle in the way of an application. He could apply to adopt the child, being resident and domiciled here and the child being British see Adoption of Children Act, 1926, s. 2. Perhaps that is the best way of dealing with the matter.

## 4.—Highway—Road coincident with public footpath—Construction of bridge for vehicles.

A-B is a roadway in a rural district connecting two county roads. The road serves a number of agricultural holdings and at the point with which I am concerned it passes through a river by means of a ford. On the ford a footbridge is provided for the use of pedestrians. The footbridge was erected and maintained by the rural district council before 1930, and has been accepted by the county council as a highway liability transferred to them under the Local Government Act, 1929. It is accepted that a public footpath exists along the length of roadway A-B, but there is no evidence of any footpath repairs ever having been carried out by a public authority, and any repairs to the roadway have been carried out by the occupiers of land along its length to maintain it as a cartway, although there is no evidence to show that its use as a cartway has been restricted to the occupiers of adjoining lands. The parish council consider that it would be a benefit to residents in the locality if a bridge capable of holding vehicular traffic were built in substitution for the existing

public footbridge, and have asked the county council to provide such a bridge. I have noted s. 6 of the Local Government Act, 1888, and I shall be glad to know whether you consider that the county council as highway authority have power under this or any other enactment to build a vehicular bridge to connect two parts of a public highway which is not a county road.

A "PONT."

Answer.

We notice that the road A-B is in the last sentence called "a public highway." The earlier part of the query is, however, consistent with its being a highway repairable by the county for foot passengers alone, the roadway being either a private road or, at most, a highway never made repairable by the inhabitants at large. The opinion we first formed, on the information supplied, was that the county council would not have power to build the suggested bridge for vehicles. But s. 6 of the Act of 1888 is very wide. Strange results may follow if a county council can build a bridge to link two roads which are not highways repairable by them—either riparian owner, by letting his piece of road go out of repair, could render the bridge useless. Again, the council could apparently build a bridge for an estate owner, linking two properties, at points where the public had no right of access at all. However, in face of the section, which does not seem to have been limited by judicial decision, we are not prepared to say that the building of such a bridge is beyond the council's powers.

## 5.—Housing Act, 1949, s. 23—Improvement grants—Conditions of tenancy—Necessity.

According to s. 23 (1) (b) the dwelling in respect of which an improvement grant has been made shall at all times at which it is not occupied by the applicant for the improvement grant, etc., be let or be kept available for letting at a rent not exceeding the maximum rent, etc. Does this disqualify for purposes of obtaining an improvement grant the following three cases—

1. Cottages occupied on service occupations when no rent is paid;  
2. Cottages occupied by agricultural workers in cases where no rent is paid but there is a deduction of an amount equal or attributable to an agricultural rent from wages;

3. Cottages which form part of a farm, let by a property owner to a tenant farmer for use of the farmer's employees on the farm?

In the first case the cottages are not let or available for letting at a rent since no rent is paid, and much the same considerations apply to the second case. In the third case the property owner has no means of knowing what bargain the farmer makes with his employees. The condition as to the cottages being let or kept available for letting at a rent, therefore, could not be complied with. Section 30 by implication recognizes that a dwelling let to a person in consequence of his employment may qualify for a grant but that is not the same thing.

APS.

Answer.

1 and 3. Yes.  
2. No, provided that on actual tenancy exists under which the rent is legally payable.

## 6.—Husband and Wife—Maintenance order—Resumption of cohabitation—Parties again separate—Recovery of arrears—New order.

On August 19, 1946, a maintenance order, not including a non-cohabitation order was made against P in favour of his wife Mrs. P and her infant children. No payments whatsoever were made under this order and a summons was issued in respect of arrears, which was ignored by the husband and consequently, a warrant was issued on which he appeared recently before my magistrates. The wife did not appear. The husband stated he had resumed cohabitation with the wife and lived with her as man and wife for a period of some eight days about a month ago.

Without going into the matter further, my magistrates adjourned the hearing for fourteen days and have notified the husband and the wife they must be present on that date.

So far as I can see, provided resumption of cohabitation is proved, the order ceased to have effect immediately, notwithstanding the fact that the husband has since left the wife again. In these circumstances, your advice is requested on the following points:

(1) Supposing the order to have ceased, can my magistrates make an order for payment of the arrears from the date the order was made up to the date cohabitation was resumed?

(2) Must the wife now issue a fresh summons for maintenance based on failure to maintain by the husband since cohabitation ceased?

SEAR.

Answer.  
(1) As the parties have again separated, we think those arrears which existed before the resumption of cohabitation can now be recovered, though inasmuch as the order ceased to have effect it might be argued that it could no longer be used for this purpose.

(2) She may do this or, we think, she may apply to have the original order revived under s. 30 (3) of the Criminal Justice Administration Act, 1914: see note p. 1157 of *Stone*, 1949.

#### 7.—Husband and Wife—Husband in Scotland—Service of summons.

EGR., resident in my division, issued a summons for maintenance under the Summary Jurisdiction Married Women Acts in respect of herself and two children, against her husband, AFR., resident in the same division at the time of issue. When the police attended to effect service they ascertained AFR. had gone to live at G, Scotland, they therefore attended the summons to show AFR.'s Scottish address, annexed a declaration as to handwriting and seal, and forwarded it to the G, Scotland, police to effect service. The G, Scotland, police have returned the summons unserved, stating they have taken legal advice, and are precluded from complying with the request to effect service.

Please advise me whether there is any method whereby a woman living in England can take proceedings against a defaulting husband living in Scotland for the maintenance of herself and children, and if so, in an order being made, can she take further proceedings against the husband in Scotland for enforcement of the order. Alternatively, is the only answer for the woman to go and reside in Scotland, and take proceedings in the Scottish courts?

SEAR.

Answer.  
It appears from certain decisions of the Scottish courts, and from the English cases of *Forsyth v. Forsyth* [1947] 2 All E.R. 623; 112 J.P. 60 and *Macrae v. Macrae* [1949] 1 All E.R. 290; 113 J.P. 107, that an English court cannot make an order upon a husband ordinarily resident in Scotland unless, perhaps, at the time the summons is issued and served, he is in England. The Scottish police will not usually serve such summonses when issued by an English court and sent to them for service under the Summary Jurisdiction (Process) Act, 1881. Consequently, it seems that the wife must see if she can get relief by going to Scotland. We note that in this case the husband was resident in England when the summons was issued, so that according to English law it would seem that an English court has jurisdiction, provided the summons could be served in Scotland. It might be worth while to submit this point of view to the Scottish police, but we doubt whether they will feel justified in serving the summons, and the case of *Macrae v. Macrae* seems rather against it.

#### 8.—Landlord and Tenant—Informal agreements.

My Council have always stamped the tenancy agreements with their tenants with an *ad valorem* stamp, the cost of which is borne by the tenant. If my council decide that in future they will require only a memorandum of the tenancy to be signed by the tenant and stamped with a stamp, will such a memorandum be sufficient to enable the council to sue for arrears of rent?

ATVA.

Answer.

An agreement for a tenancy can be effected by word of mouth, or by informal writing, as well as by a proper lease, and still be enforceable. We see no advantage in informality, and should advise against it. (P.P. 6 at 112 J.P.N. 724.)

#### 9.—Licensing—Intoxicating liquor—Music and dancing—Extended Sunday night occasion into small hours of Sunday morning.

(a) A fully licensed hotel in my borough runs a dance for its guests in part of the dining room immediately after dinner about once or twice a week, the dance only being available to hotel residents or to outsiders during there and it would appear that no music and dancing licence is necessary, although part IV of the Public Health Acts Amendment Act, 1890, has been adopted by the local authority as such dances are not "public." On special occasions, such as Christmas, New Year, Easter, Whitsun, applications in the past have been made for an extension of hours for the sale of intoxicating liquor for dinner dances for the benefit of outside people and it was thought necessary for a music and dancing licence to be applied for applicable to the special occasion only. It would appear that as the premises are not

habitually used for music and dancing, being the main dining hall of the hotel, that there would be no need to have a music and dancing licence for these special occasions, although of course an extension of hours for liquor would be necessary. Even if a music and dancing licence is not required for such special occasions when outsiders can take part, it would appear that in the event of such special occasion being on a Saturday evening then the music and dancing should stop at midnight, otherwise the hotel would be contravening the Sunday Observance Act, 1780.

(b) My justices will shortly be considering extension of hours for the sale of intoxicating liquor for Christmas Eve and New Year's Eve, both of which are on a Saturday, and it is noted that the commissioner of police for the metropolis will consider applications for the metropolis up to 12.30 a.m. on Christmas Day and 12.30 a.m. on New Year's Day.

It is appreciated that under s. 57 (2) of the Licensing (Consolidation) Act, 1910, where a special order of exemption has been granted, the holder of a justices' on-licence shall not be subject to any penalty for the contravention of the Licensing Act, 1921, as to permitted hours during the time to which the order extends, but he shall not be exempted by the order from any penalty to which he may be subject by any other provision of this or any other Act of Parliament.

Would not the Sunday Observance Act, 1780, prevent the granting of the special order of exemption for the Sunday?

NOEM.

Answer.

(a) On the information given we cannot entirely agree with our correspondent that the dances in question are not such that a licence is necessary under s. 51 of the Public Health Acts Amendment Act, 1890. The Sunday Observance Act, 1780, s. 1, enacts that no house, room, or other place shall be opened or used for public entertainment or amusement upon any part of the Lord's day called Sunday. We think that the admission of people described by our correspondent as "outsiders dining in the hotel" and "outside people" creates a situation that the dances are a "public entertainment or amusement" within the meaning of the section.

(b) We find it difficult to follow our correspondent's reasoning. The sale and consumption of intoxicating liquor on Sundays under licence has never (certainly not in modern days) been suggested to be an infringement of the law as to Sunday observance.

#### 10.—Local Land Charges—Planning restrictions—Time for registration—Continuance of registered entry.

1. Should the registration of prohibition or restriction arising from the Town and Country Planning Act, 1947, be made as soon as the development permission is issued or on completion of the development?

2. Should the registration be cancelled under any circumstances when the conditions of the planning permission have been fulfilled on completion of the development?

ADF.

Answer.

1. At once. That is the stage at which the property is most likely to pass into the hands of a purchaser without notice, the event which provides the reason for having a register of local land charges.

2. No; in many cases these conditions may need to be referred to, even after development has been completed in accordance with the conditions.

#### 11.—Private Street Works Act, 1892—Objection withdrawn.

My council has resolved to make up a road under the Private Street Works Act, 1892, and the formalities laid down in s. 6 (3) have been complied with. One of the objectors objected in writing (within the prescribed period) that the estimated costs are excessive, but on being informed by me that he was the only objector and that the price per foot frontage was that of the lowest tenderer, he wrote (after the one month for objections had expired) and stated he now wished to withdraw his objection. It will be appreciated that my council has done nothing to meet the objector's wishes, nor has it amended its proposals in any way, but the objector has purported to withdraw after receiving my letter. Must I still apply to the court under s. 8, or can I safely take it that the written notice of withdrawal (which was received after one month) makes this unnecessary? If the council have to sue for the expenses, I do not want to be met with the defence that an objection was made which was not heard by the court.

APS.

Answer.

We should ourselves treat written withdrawal as effective, even though the Act of 1892 has not foreseen it. In other words, we do not believe such a defence would prevail.

## OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (contd.)

**DORSET COMBINED PROBATION AREA****Appointment of Full-time Male Probation Officer**

APPLICATIONS are invited for the above appointment in the Dorset Combined Probation Area.

The appointment will be subject to the Probation Rules, and the salary will be in accordance with these Rules, subject to the appropriate superannuation deductions, plus a travelling allowance in accordance with the County Scale. The successful candidate will be required to pass a medical examination.

Forms of application and particulars of the appointment may be obtained from the undersigned, to whom applications should be returned not later than February 18, 1950, with the names and addresses of not more than three persons to whom reference may be made.

Canvassing, either directly or indirectly, will be a disqualification.

**C. P. BRUTTON,**  
Clerk to the Probation Committee.

County Hall,  
Dorchester.

**LEXDEN AND WINSTREE RURAL DISTRICT COUNCIL****Appointment of Clerk and Solicitor**

APPLICATIONS are invited for the office of Clerk and Solicitor to the Council from Solicitors with experience of local government law and administration.

The person appointed will be required to devote his whole time to the statutory and other duties of the office and such other duties as may be assigned to him by the Council from time to time.

The appointment will be subject to the Conditions of Service contained in the Second Schedule to the Memorandum of the Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks dated September 8, 1949, and to the provisions of the Local Government Superannuation Act, 1937, and will be subject to the successful applicant passing satisfactorily a medical examination.

The commencing salary will be £1,150 per annum rising by four annual increments of £50 each to £1,350 per annum.

The appointment will be determinable by three months' notice on either side.

All fees except fees paid to him as Returning Officer at local elections and as Assistant Registration Officer for the purpose of the preparation of the Register of Electors shall be paid into the Council's account.

Applications, stating age, present appointment and experience, with copies of three recent testimonials to be received by me not later than February 13, 1950.

Canvassing of the members of the Council will disqualify.

**G. E. TOMPSON,**  
Clerk to the Council.

Rebow Chambers,  
Sir Isaac's Walk,  
Colchester.

**COUNTY OF CAMBRIDGE****Petty Sessional Division of Linton****Appointment of Part-time Clerk to the Justices**

APPLICATIONS are invited from Solicitors for the appointment of Clerk to the Justices for the Petty Sessional Division of Linton in the County of Cambridge.

The present inclusive salary paid by the Standing Joint Committee is £282 13s. 4d. per annum. The appointed Clerk will provide an office and clerical assistance, but will receive a Book Allowance of £3 per annum and payment in respect of Magisterial Forms and postages.

Applications, marked "Justices' Clerk," stating age, qualifications and experience, should be sent to me at the address given below, not later than February 20, 1950.

The applicants must be in a position to take over the duties on April 1, 1950.

**WILLIAM ADAMS,**  
Clerk to the Justices.

14, Church Street,  
Saffron Walden,  
Essex.

**COUNTY OF CORNWALL****Appointment of Assistant Solicitor**

APPLICATIONS are invited for the appointment of Assistant Solicitor on the staff of the Clerk of the Peace and of the County Council.

Applicants must be capable advocates and previous local government experience (particularly in connexion with Town and Country Planning) would be an advantage. The salary will be within A.P.T. Division Grade VIII (£685 to £725-£760), and the initial salary will depend on the qualifications and experience of the successful candidate.

The appointment will be subject to the National Scheme of Conditions of Service and to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, together with the names of three persons to whom reference may be made, should be addressed to the undersigned not later than February 18, 1950.

**E. T. VERGER,**

Clerk of the Peace and of the County Council.

County Hall,

Truro.

January 26, 1950.

**The National Association of Discharged Prisoners' Aid Societies (Incorporated)**

*Affiliated to The International Penal and Penitentiary Commission*

**Patron: H.M. The King**

**FUNDS AND LEGACIES URGENTLY NEEDED****Registered Office:**

**St. Leonard's House, 66, Eccleston Square,  
Westminster, S.W.1. Tel.: Victoria 9717/9**

**COUNTY COUNCILS ASSOCIATION****Secretary**

APPLICATIONS are invited for the above full-time post, for which legal and local government knowledge in all its branches is essential, at a salary to be fixed at between £2,500 and £3,000 a year according to qualifications and experience. The Local Government Superannuation Act, 1937, will apply to the appointment, which will begin on October 1, 1950, and will be terminable by three months' notice on either side.

Applications, of which five copies must be provided, must be made on a form to be obtained from the undersigned and must be received at the Association's offices, 84, Eccleston Square, Westminster, S.W.1., not later than March 15, 1950.

**S. M. JOHNSON,**  
Secretary.

**INQUIRIES**

**DETECTIVE AGENCY (HOYLAND'S)**  
(T. E. Hoyland, ex-Detective Sergeant);  
Member of British Detectives Association  
and Federation of British Detectives.

**Divorce, Process serving, Observations, Confidential investigations and Status inquiries anywhere. Male and Female staff. Over 150 Agents in various parts of the country.—1, Mayo Road, Bradford. Tel.: Bradford 26823 day or night. Telegrams: "Evidence" Bradford.**

**THE****DOGS' HOME Battersea**

INCORPORATING THE TEMPORARY  
HOME FOR LOST & STARVING DOGS

**4, BATTERSEA PARK ROAD**

**LONDON, S.W.8,**

**AND**

**FAIRFIELD ROAD, BOW, E.**  
(Temporarily closed)

**OBJECTS:**

1. To provide food and shelter for the lost, deserted, and starving dogs in the Metropolitan and City Police Area.
2. To restore lost dogs to their rightful owners.
3. To find suitable homes for unclaimed dogs at nominal charges.
4. To destroy, by a merciful and painless method, dogs that are diseased and valueless.

**Out-Patients' Department (Dogs and Cats only) at Battersea, Tuesdays and Thursdays 3 p.m.**

Since the foundation of the Home in 1860 over 1,925,000 stray dogs have received food and shelter.

Contributions will be thankfully received by **E. L. HEALEY TUTT, Secretary.**

**CITY OF PETERBOROUGH****Assistant Solicitor**

APPLICATIONS are invited from qualified solicitors for the appointment of Assistant Solicitor in the Town Clerk's department, at a salary in accordance with Grade VII (£635 to £710). Local Government experience will be an advantage. The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, the Conditions of Service of the Council and the passing of a medical examination.

Applications for the appointment, stating age and full details of experience, previous and present appointments, and salary, accompanied by three recent testimonials, must reach the undersigned not later than February 22, 1950.

ARTHUR J. REEVES,  
Town Clerk.

Town Hall,  
Peterborough,  
January, 1950.

Established 1886. Telephone: Holborn 8273

**GENERAL REVERSIONARY  
AND INVESTMENT CO.**

ASSETS EXCEED £2,000,000  
Reversions and Life Interests Purchased  
Loans Granted thereon.

Apply to the ACTUARY, 50, CANNY STREET, W.C.2.

**SURREY COMBINED PROBATION  
AREA****Appointment of Full-time Female Probation  
Officer**

APPLICATIONS are invited for the appointment of a full-time female probation officer. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a full-time serving probation officer.

The appointment will be subject to the Probation Rules, 1926-48, and the Probation Officers' Superannuation Order, 1948, and the salary will be in accordance with the prescribed scale.

Applicants should be able to drive a car.

The successful applicant may be required to pass a medical examination.

Applications must be made on forms to be obtained from the undersigned, and should reach him not later than Friday, February 17, 1950.

E. GRAHAM,

Deputy Clerk of the County Probation  
Committee.

County Hall,  
Kingston-upon-Thames,  
Surrey.

**CITY OF BRADFORD****Assistant Solicitor**

APPLICATIONS are invited for the appointment of First Assistant Solicitor in the office of the undersigned at a Salary within Grade X (£850-£1,000) of the National Scale of Salaries.

Experience in the application of the law relating to Highways, and Public Health and Police matters is desired and previous municipal experience is essential. The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. Applications, endorsed "Assistant Solicitor," stating age, qualifications and experience, accompanied by a copy of one recent testimonial and giving the name of one reference, should reach the undersigned not later than February 8, 1950.

Canvassing will disqualify and an applicant who is related to a member of, or to a senior officer of the Council must disclose the fact in his application.

W. H. LEATHAM,  
Town Clerk.

Town Hall, Bradford.

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and Local Government Review.

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